

P
4562

TITLES OF
UNITED STATES CODE
AND
UNITED STATES CODE ANNOTATED

- | | |
|---|--|
| 1. General Provisions. | 29. Labor. |
| 2. The Congress. | 30. Mineral Lands and Mining. |
| 3. The President. | 31. Money and Finance. |
| 4. Flag and Seal, Seat of
Government, and the
States. | 32. National Guard. |
| 5. Executive Departments and
Government Officers and
Employees. | 33. Navigation and Navigable
Waters. |
| 6. Official and Penal Bonds. | 34. Navy (<i>See Title 10, Armed
Forces</i>). |
| 7. Agriculture. | 35. Patents. |
| 8. Aliens and Nationality. | 36. Patriotic Societies and
Observances. |
| 9. Arbitration. | 37. Pay and Allowances (Army,
Navy, Air Force, Marine
Corps, Coast Guard, Coast
and Geodetic Survey, and
Public Health Service). |
| 10. Armed Forces. | 38. Pensions, Bonuses, and
Veterans' Relief. |
| 11. Bankruptcy. | 39. The Postal Service. |
| 12. Banks and Banking. | 40. Public Buildings, Property,
and Works. |
| 13. Census. | 41. Public Contracts. |
| 14. Coast Guard. | 42. The Public Health and
Welfare. |
| 15. Commerce and Trade. | 43. Public Lands. |
| 16. Conservation. | 44. Public Printing and
Documents. |
| 17. Copyrights. | 45. Railroads. |
| 18. Crimes and Criminal
Procedure. | 46. Shipping. |
| 19. Customs Duties. | 47. Telegraphs, Telephones,
and Radiotelegraphs. |
| 20. Education. | 48. Territories and Insular
Possessions. |
| 21. Food and Drugs. | 49. Transportation. |
| 22. Foreign Relations and
Intercourse. | 50. War and National Defense. |
| 23. Highways. | |
| 24. Hospitals, Asylums, and
Cemeteries. | |
| 25. Indians. | |
| 26. Internal Revenue Code. | |
| 27. Intoxicating Liquors. | |
| 28. Judiciary and Judicial
Procedure. | |

UNITED STATES CODE ANNOTATED

TITLE 46 SHIPPING Sections 251-681

Comprising All Laws of a General and Permanent Nature
Under Arrangement of Official Code of the
Laws of the United States
With
Annotations from Federal and State Courts

Kept to Date by Cumulative Annual Pocket Parts

St. Paul, Minn.
West Publishing Co.

Brooklyn, New York
Edward Thompson Company

COPYRIGHT, 1958
BY
WEST PUBLISHING CO.
AND
EDWARD THOMPSON COMPANY

THIS TITLE

These volumes, constituting Title 46 of the United States Code, contain laws of a general and permanent nature relating to Shipping, including all amendments and new enactments to February 1, 1958.

Since the publication of the volume covering sections 1 to 540 in 1928, and the volume covering sections 541 to End in 1944, which these volumes replace, there has been a steady expansion of the legislation and annotation material included in this title.

Probably the most conspicuous example of the growth in litigation has been in that relating to seamen's benefits, and more particularly to actions arising under the Jones Act, section 688 of this title.

Recent legislative developments may be exemplified by the 1954 general amendments to the Federal Ship Mortgage Insurance provisions of the Merchant Marine Act, 1936, sections 1271 to 1279 of this title.

In addition to the Jones Act and the several Merchant Marine Acts, other laws of prime importance in this title include the Registry Acts, the Shipping Act, the Intercoastal Shipping Act, the Ship Mortgage Act, the Carriage of Goods by the Sea Act, and the Limitation of Shipowners' Liability Act.

Popular Name Table

For convenient reference, a table of popular names of the laws covered in Title 46, showing the sections where the laws are found, has been included.

Annotations or Notes of Decisions

The case annotations or constructions of the courts are correlated under numbered notes so that the user, by referring to the same note number in the supplementary pamphlets and pocket parts, can readily locate the latest decisions on any phase of the law.

THIS TITLE

The annotations are complete, covering all decisions of the Federal and State courts and the opinions of the Attorney General, construing and applying the laws, in the following:

<i>Reports</i>	<i>Abbreviations</i>
Supreme Court Reporter	S. Ct.
United States Reports	U. S.
Lawyers' Edition	L. Ed.
Federal Cases	Fed. Cas. No.
Federal Reporter	F.
Federal Reporter, Second Series	F.2d
Appeal Cases, District of Columbia	App. D. C.
U. S. Court of Appeals, District of Columbia ..	U. S. App. D. C.
Federal Supplement	F. Supp.
Federal Rules Decisions	F. R. D.
Atlantic Reporter	A.
Atlantic Reporter, Second Series	A.2d
New York Supplement	N. Y. S.
New York Supplement, Second Series	N. Y. S.2d
North Eastern Reporter	N. E.
North Eastern Reporter, Second Series	N. E.2d
North Western Reporter	N. W.
North Western Reporter, Second Series	N. W.2d
Pacific Reporter	P.
Pacific Reporter, Second Series	P.2d
South Eastern Reporter	S. E.
South Eastern Reporter, Second Series	S. E.2d
Southern Reporter	So.
Southern Reporter, Second Series	So.2d
South Western Reporter	S. W.
South Western Reporter, Second Series	S. W.2d
Opinions Attorney General	Op. Atty. Gen.
Court of Claims	Ct. Cl.
Court of Customs and Patent Appeals	C.C.P.A.
Board of Tax Appeals	B. T. A.
Tax Court of the United States	T. C.
American Bankruptcy Reports	Am. Bankr. Rep.
American Bankruptcy Reports, New Series ..	Am. Bankr. Rep. N.S.
Other Standard Reports	

Preceding the annotations under each section there is an alphabetical descriptive-word index to the annotations that follow.

Historical Notes and Cross References

In addition to the latest statutes and court constructions, these volumes contain complete historical notes, and cross references to related subjects.

THIS TITLE

Index to Text

A separate index to the text of the laws contained in Title 46 is set out in the last volume of this title, to assist subscribers in quickly locating particular subjects in which they are interested.

Cumulative Supplementary Service

These volumes will be kept always up-to-date, through the established United States Code Annotated supplementary service consisting of current pamphlets and Cumulative Annual Pocket Parts.

THE PUBLISHERS

March, 1958

PREFACE

UNITED STATES CODE 1952 EDITION

This fifth edition of the United States Code was prepared and published pursuant to section 202 (c) of Title 1, U. S. Code, General Provisions. It contains a consolidation and codification of all the general and permanent laws of the United States in force on January 2, 1953. By statutory authority this edition may be cited "U. S. C. 1952 ed." Previous editions were published in 1926, 1934, 1940, and 1946.

Inasmuch as many of the general and permanent laws which are required to be incorporated in this Code are inconsistent, redundant, archaic and obsolete, there has been inaugurated a comprehensive project of revising and enacting the Code, consisting of 50 titles, into positive law, title by title. In furtherance of this plan bills have been enacted to revise, codify and enact into positive law Titles 1, 3, 4, 6, 9, 14, 17, 18, 28, and 35. In addition, bills relating to other titles are also being prepared for introduction at an early date. When this work is completed all the titles of the Code will be legal evidence of the general and permanent law and recourse to the numerous volumes of the Statutes at Large for this purpose will be unnecessary.

The title and chapter structure of the 1946 edition, together with Supplement V thereto, has been substantially preserved, the only changes made having been necessitated by the enactment of legislation during the 2d session of the 82d Congress. Any errors discovered in the 1946 edition or Supplement V have been corrected.

The actual work of preparing and editing the material for this edition was done by the West Publishing Co. of St. Paul, Minnesota, and the Edward Thompson Company of Brooklyn, New York, under the supervision of the Committee on the Judiciary of the House of Representatives. These companies prepared the original Code which Congress enacted in 1926 and have continuously served the Committee since that time in the preparation of the authorized new editions and Supplements to the Code. Grateful acknowledgment is made to the editorial and manuscript staffs of both publishing companies and of the law revision counsel for the Committee, for their untiring efforts to make this edition as nearly perfect as possible. Acknowledgment of valuable assistance is made also to various officers of Government departments and agencies for their helpful suggestions and criticisms.

The Committee on the Judiciary invites criticisms or suggestions with the view of improving the Code wherever possible. It is hoped that the program of enacting the Code into positive law, title by title, to improve its present status as merely *prima facie* evidence of the law, will meet with early success.

CHAUNCEY W. REED

Chairman,

Committee on the Judiciary.

Washington, D. C., May 1, 1953.

*

PREFACE

THE CODE OF THE LAWS OF THE UNITED STATES

This Code is the official restatement in convenient form of the general and permanent laws of the United States in force December 7, 1925, now scattered in 25 volumes—i. e., the Revised Statutes of 1878, and volumes 20 to 43, inclusive, of the Statutes at Large. No new law is enacted and no law repealed. It is *prima facie* the law. It is presumed to be the law. The presumption is rebuttable by production of prior unrepealed Acts of Congress at variance with the Code. Because of such possibility of error in the Code and of appeal to the Revised Statutes and Statutes at Large, a table of statutes repealed prior to December 7, 1925, is published herein together with the Articles of Confederation; the Declaration of Independence; Ordinance of 1787; the Constitution with amendments and index; tables of cross-references to the Revised Statutes, the Statutes at Large, the United States Compiled Statutes, Annotated, of the West Publishing Co., and the Federal Statutes, Annotated, of the Edward Thompson Co.; an appendix with the general and permanent laws of the first session of the Sixty-ninth Congress; and finally an exhaustive index of the laws in the Code and appendix.

The first official codification of the general and permanent laws of the United States was made in 1874 and followed by a perfected edition in 1878. From 1897 to 1907 a commission was engaged in an effort to codify the great mass of accumulating legislation. The work of the commission involved an expenditure of over \$300,000, but was never carried to completion. More recently the task of codification was undertaken by the late Hon. Edward C. Little as chairman of the Committee on the Revision of the Laws of the House of Representatives, who labored indefatigably from 1919 to the day of his death, June 24, 1924. The volumes which represented the result of his labors were embodied in bills which passed the House of Representatives in three successive Congresses unanimously but failed of action in the Senate.

The Code now set forth has resulted from the hearty cooperation of the Committee of the House of Representatives on the Revision of the Laws, and the Select Committee of the United States Senate consisting of Richard P. Ernst, chairman, George Wharton Pepper, and William Cabell Bruce. Under the auspices of the committees of the House and the Senate the actual work of assembling and classifying the mass of material has been done by the West Publishing Co. and the Edward Thompson Co. These two houses have subordinated their private interests to the public good and have produced a result which would have been impossible without them. Acknowledgment of valuable assistance is given to W. H. McClenon, of the Legislative Reference Division of the Library of Congress, and to the

PREFACE

law officers and other representatives of the several departments, bureaus, and commissions of the Government. Appreciation is also expressed of the interest in the work taken by the Committee on the Revision of the Federal Statutes of the American Bar Association.

Scrutiny of this Code is invited. Constructive criticism is solicited. It is the ambition of the Committee on the Revision of the Laws of the House of Representatives gradually to perfect the Code by correcting errors, eliminating obsolete matter, and restating the law with logical completeness and with precision, brevity, and uniformity of expression.

Address criticisms to Chairman of the Committee on the Revision of the Laws of the House of Representatives, Washington, D. C.

Roy G. Fitzgerald, Chairman.

Washington, June 30, 1926.

FOREWORD

The publishers of this annotated edition of the Code of the Laws of the United States are rendering a notable service to the public in general and to the legal profession in particular.

Cooperation between the publishers and the Committees of the Senate and House on Revision of the Laws made possible the preparation of the Code adopted by the Sixty-ninth Congress. The Code thus adopted is evidence of the law. After the correction of errors, inevitable in a work of this sort, the Code will no doubt be enacted into law and all the other legislation of Congress will be repealed. Meanwhile it is of the highest importance to bring together for ready reference all the legislation embodied in the Code and the mass of judicial decisions which have construed the legislation. This can best be done by distributing the Code through a series of volumes of convenient size, each volume containing a designated portion of the legislative text together with annotations of relevant judicial decisions. This task of division and addition has now been completed in a satisfactory way. The volume embodying legislation on a given subject can readily be taken from the library shelf or from the book-rack beside the desk and carried to court or wherever it is intended to be consulted. Mahomet need no longer seek the mountain. The mountain has distributed itself into foothills and all of them have come to him.

As a member of the Senate Committee on the Revision of Laws I have had something to do with the evolution of the Code. Members of the two Committees can appreciate, as few others can do, the magnitude of the problem of which the Code is a solution. While the annotations and other auxiliary matter account for the number of volumes in the present edition, it is well to remember that the Code itself, as issued from the Government Printing Office, is included within the limits of a single volume. That all the permanent and general legislation of a century and a half can be thus compressed is a fact to be borne in mind whenever it is charged that there has been an unreasonable multiplication of federal statutes. In spite of the popular impression to the contrary, I believe that a critical study of this body of law will disclose the Congress of the United States as the most conservative of the important legislatures of the world. I further believe that no set of volumes in the law library will be found more serviceable than those now made available for general use.

GEORGE WHARTON PEPPER.

Washington, D. C.,
December 16, 1926

TABLE OF CONTENTS

	Page
Preface to United States Code 1952 Edition	IX
Preface to the Code of the Laws of the United States	XI
Foreword	XIII
Popular Name Acts	XVII

TITLE 46

SHIPPING

Volume containing §§ 1-250

Chap.		Sec.
1.	Administration of Shipping Laws	1
2.	Registry and Recording	11
2A.	Load Lines for American Vessels	85
3.	Clearance and Entry	91
4.	Tonnage Duties	121
5.	Discriminating Duties and Reciprocal Privileges	141
6.	Regulation as to Vessels Carrying Steerage Passengers	151
7.	Carriage of Explosives or Dangerous Substances	170
8.	Limitation of Vessel Owner's Liability	181
9.	Log Books	201
10.	Regulation of Pilots and Pilotage	211
11.	Officers and Crews of Vessels	221

Volume containing §§ 251-681

12.	Regulation of Vessels in Domestic Commerce	251
13.	Passports and Papers of Vessels Engaged in Foreign Commerce	351
14.	Inspection of Steam Vessels	361
15.	Transportation of Passengers and Merchandise by Steam Vessels	451

TABLE OF CONTENTS

Chap.		Sec.
16.	Regulation of Motor Boats	511
17.	Regulation of Fishing Voyages	531
18.	Merchant Seamen (§§ 541-681)	541

Volume containing §§ 682-800

18.	Merchant Seamen (§§ 682-713)	682
19.	Wrecks and Salvage	721
19A.	Admiralty and Maritime Jurisdiction	740
20.	Suits in Admiralty by or Against Vessels or Cargoes of United States	741
21.	Death on the High Seas by Wrongful Act	761
22.	Suits in Admiralty Against United States for Damages Caused by Public Vessels or for Towage or Salvage Services	781

Volume containing §§ 801-End

23.	Shipping Act	801
23A.	Intercoastal Shipping	843
24.	Merchant Marine Act, 1920	861
24A.	Merchant Marine Act, 1928	891
25.	Ship Mortgages	911
26.	Home Port of Vessels	1011
27.	Merchant Marine Act, 1936	1101
28.	Carriage of Goods by Sea	1300
29.	Nautical Instruction	1331
30.	Peonage and Slave Trade Punished by Seizures and Forfeitures	1351

INDEX

(Page 571)

POPULAR NAME ACTS

This table lists the principal laws included in Title 46, designated as they are popularly known, and shows the classification of each within the title.

Popular Name	Sections
Able Seamen Act	672—2
Admiralty Jurisdiction Extension Act	740
Bailey Merchant Marine Act	1242a
Bill of Lading Acts	1300 et seq.
Cargo Preference Laws	1242(b)
Cargo Ship Construction Act	1119a, 1119b
Carriage of Goods by Sea Act	1300 et seq.
Certificates of Registry Acts	11 et seq.
Change of Masters Act	276
Coasting and Fishing Act	251 et seq.
Coastwise Load Line Act, 1955	88 et seq.
Dangerous Cargo Act	170 et seq.
Death on the High Seas Act	761 et seq.
Enrollment of Vessels Act	252 et seq.
Essential Vessels Act	1242a
Federal Ship Mortgage Insurance Act	1271 et seq.
Fire Act	182
Fuel Oil Vessels Act	467
Great Lakes Coasting District Act	293a
Great Lakes Hours of Labor Act	673
Harter Act	190 et seq.
Home Port Act	1011 et seq.
Hospital Ships Exemption Act	133, 134
Intercoastal Shipping Act	843 et seq.
Jones Act	688
Liens on Vessels Act	971 et seq.
Life Saving Appliance Acts	481
Limitation of Shipowners' Liability Act	181 et seq.
Load Lines for Merchant Vessels Act	85 et seq.
Maguire Seamen Act	563
Maritime Act	221
Maritime Liens Acts	971 et seq.
Marine Radiotelegraph Operators' Licensing Act	229a et seq.
Merchant Marine Act, 1920	861 et seq.

POPULAR NAME ACTS

Popular Name	Sections
Merchant Marine Act, 1928	891 et seq.
Merchant Marine Act, 1936	1101 et seq.
Merchant Seamen Act	542a et seq.
Merchant Shipping Act	574 et seq.
Motor Boat Act of 1940	526 et seq.
Nautical Schools Acts	1331 et seq.
Officers' Competency Certificates Act	224a
Pilotage Act	213
Pilots Acts	211, 212
Pursers and Surgeons Registry Act	242 et seq.
Public Vessels Liability Act	781 et seq.
Registry Acts	11 et seq.
Salvage Acts	721 et seq.
Seagoing Barge Act	395 et seq.
Seamen Discharge Act	643
Seamen's Acts	541 et seq.
Ship Construction Reserve Fund Act	1161
Ship Registry and Recording Law	11 et seq.
Ship Mortgage Act, 1920	911 et seq.
Ship Mortgage Insurance Act	1271 et seq.
Ship Subsidies Act	1101 et seq.
Shipowners' Limited Liability Act	181 et seq.
Shipping Act	801 et seq.
Slave Trade Prohibition Act	1351 et seq.
Steamboat Inspection Act	361 et seq.
Suits in Admiralty Act	741 et seq.
Tonnage Duties Acts	121 et seq.
Tonnage of Vessels Act	77
Undocumented Vessels Act	288
Unrigged Wooden Vessels Act	63
War Risk Insurance Act	1281 et seq.

Cite this Book

Thus: 46 U.S.C.A. § 251

THE CODE OF THE LAWS OF THE UNITED STATES OF AMERICA

TITLE 46 SHIPPING

Sections 251-681 are set out in this volume

Chap.	Sec.
1. Administration of Shipping Laws	1
2. Registry and Recording	11
2A. Load Lines for American Vessels	85
3. Clearance and Entry	91
4. Tonnage Duties	121
5. Discriminating Duties and Reciprocal Privileges	141
6. Regulation as to Vessels Carrying Steerage Passengers	151
7. Carriage of Explosives or Dangerous Substances	170
8. Limitation of Vessel Owner's Liability	181
9. Log Books	201
10. Regulation of Pilots and Pilotage	211
11. Officers and Crews of Vessels	221
12. Regulation of Vessels in Domestic Commerce	251
13. Passports and Papers of Vessels Engaged in Foreign Commerce	351
14. Inspection of Steam Vessels	361
15. Transportation of Passengers and Merchandise by Steam Vessels ..	451
16. Regulation of Motor Boats	511
17. Regulation of Fishing Voyages	531
18. Merchant Seamen	541
19. Wrecks and Salvage	721
19A. Admiralty and Maritime Jurisdiction	740
20. Suits in Admiralty by or Against Vessels or Cargoes of United States	741
21. Death on the High Seas by Wrongful Act	761
22. Suits in Admiralty Against United States for Damages Caused by Public Vessels or for Towage or Salvage Services	781
23. Shipping Act	801
23A. Intercoastal Shipping	843
24. Merchant Marine Act, 1920	861
24A. Merchant Marine Act, 1928	891

Chap.	Sec.
25. Ship Mortgages	911
26. Home Port of Vessels	1011
27. Merchant Marine Act, 1936	1101
28. Carriage of Goods by Sea	1300
29. Nautical Instruction	1331
30. Peonage and Slave Trade Punished by Seizures and Forfeitures	1351

CHAPTER 12.—REGULATION OF VESSELS IN DOMESTIC COMMERCE

- Sec.
251. Vessels of United States.
252. Vessels which may be enrolled.
253. Enrollment of vessels owned by corporations.
254. Oath as to corporate or individual ownership.
255. New enrollment on death, removal, or resignation of corporate officers.
- 256, 257. Repealed.
258. Enrollment of vessels on frontiers.
259. Form of enrollment.
260. Consolidation of forms of enrollment and of license.
261. Compensation of customs officers for enrollment and license not affected.
262. License; oath not to defraud revenue; oath as to citizenship.
263. Form of license; coastal vessels of five tons or more; vessels operating on Great Lakes.
264. Exchange of enrollment and registry.
265. Exchange; when vessel is in another district.
266. Expiration of license.
267. Presentation of license for renewal by indorsement; surrender.
268. Exemption from penalty; loss of license.
269. Return and cancellation; new license.
270. Renewal when vessel is in another district.
271. Renewal on sale of vessel.
272. Oath as to payment for repairs.
273. Measurement of vessels less than twenty tons.
274. Surveyor's return of manifests and permits certified or received.
275. Record of licenses.
276. Change of master.
277. Inspection of documents.
278. Penalty for unlawfully proceeding on foreign voyage.
279. Certificate for vessel proceeding on foreign voyage.
280. Papers for vessels in whale fishery.
- 281-287. Repealed.
288. Numbering undocumented vessels.
289. Transportation of passengers in foreign vessels.

Sec.

- 289a. Same; exception to section 289; Canadian vessels.
- 290. Transportation of merchandise in foreign vessels.
- 291. Transshipment of imported merchandise intended for immediate exportation.
- 292. Dredging by foreign-built dredges.
- 293. Establishment of great districts.
- 293a. Additional great district.
- 293b. Vessels operating in Great Lakes district; laws applicable.
- 294-305. Repealed.
- 306. Trade between Alaska and other districts.
- 307. Regulations as to registered vessels in interdistrict trade.
- 308. Permit for inland transportation.
- 309. Penalty for failure to report arrival of merchandise transported inland.
- 310. Permit to touch at foreign port.
- 311. Penalty for touching at foreign port without permission.
- 312. Report of arrival at port other than that of destination.
- 313. Foreign vessels bound coastwise.
- 314. Delivery of manifest of foreign vessel.
- 315. Penalty against foreign vessels trading coastwise.
- 316. Use of foreign vessels in United States ports.
 - (a) Towing United States vessels; fines and penalties.
 - (b) Person defined.
 - (c) Foreign railroad companies using ferries, tugboats, or towboats.
 - (d) Salvaging operations by foreign vessels.
 - (e) Operations permitted by treaty.
- 317. Repealed.
- 318. Exemptions where license expires at sea.
- 319. Fine for trading without license.
- 320. Remission or mitigation of fines.
- 321. Penalty for illegal enrollment or license.
- 322. Penalty for malfeasance.
- 323. Penalty for forgery and alteration.
- 324. Penalty for obstructing officers.
- 325. Penalty for violation of license.
- 326. Exemption from forfeiture.
- 327. Notice of seizure.
- 328. Recovery of forfeitures and penalties.
- 329. Fees
- 330. Fees on frontiers.
- 331. Certain fees abolished.
- 332. Exemptions of vessels not propelled by sail or internal motive power.
- 333. Posting table of fees.
- 334. Vessels liable for fees for enrollment.
- 335. Lighters and boats.
- 336. Canal boats exempt from enrollment, license, and customs fees.

Cross References

Custody and storage of vessels, vehicles, merchandise and baggage seized under laws relating to registering, enrolling, or licensing of vessels, see section 1605 of Title 19, Customs Duties.

§ 251. Vessels of United States

Vessels of twenty tons and upward, enrolled in pursuance of sections 251-255, 258, 259, 262-280, 293, 306-316, 318, 321-330 and 333-335 of this title, and having a license in force, or vessels of less than twenty tons, which, although not enrolled, have a license in force, as required by such sections, and no others, shall be deemed vessels of the United States entitled to the privileges of vessels employed in the coasting trade or fisheries. Except as otherwise provided by treaty or convention to which the United States is a party, no foreign-flag vessel shall, whether documented as a cargo vessel or otherwise, land in a port of the United States its catch of fish taken on board such vessels on the high seas or fish products processed therefrom, or any fish or fish products taken on board such vessel on the high seas from a vessel engaged in fishing operations or in the processing of fish or fish products. R.S. § 4311; Sept. 2, 1950, c. 842, 64 Stat. 577.

Historical Note

Derivation. Acts Feb. 13, 1793, c. 8, § 1, 1 Stat. 305; Apr. 18, 1874, c. 110, 18 Stat. 31.

1950 Amendment. Act Sept. 2, 1950 amended section by adding second sentence to increase protection to American fishermen.

Suspension of Prohibition. Act Oct. 6, 1917, c. 88, 40 Stat. 392, authorized the United States Shipping Board to suspend the provisions of law and permit

vessels of foreign registry and foreign-built vessels admitted to American registry to engage in the coastwise trade during the war with Germany and for 120 days thereafter. It was repealed by Act June 5, 1920, c. 250, § 22, 41 Stat. 997.

Legislative History: For legislative history and purpose of Act Sept. 2, 1950, see 1950 U.S. Code Cong. Service, p. 3539.

Cross References

Exemption from requirements of this section—

Canal boats or boats employed on internal waters or canals of any state, see section 336 of this title.

Entry and clearance fees and tonnage taxes, enrolled, licensed, or registered vessels, see sections 111, 122, and 123 of this title.

Vessels not propelled by sail or internal motive power, see section 332 of this title.

Notes of Decisions

Commerce clause 1

Construction 2

Enforcement of maritime liens 11

Evidence of ownership 10

Ferryboats, necessity of enrollment or license 8

Necessity of enrollment or license 7, 8
Ferryboats 8

Privileges of enrolled or licensed vessels generally 9

Right to engage in coasting trade 6

Status as vessel of United States 5

Taxation 4

Validity and operation of state laws 3, 4
Taxation 4

1. Commerce clause

The act of Congress for licensing vessels to be employed in the coasting trade was based upon the power to "regulate commerce." *North River Steamboat Co. v. Livingston*, N.Y. 1825, 3 Cow. 713.

2. Construction

The acts of Congress authorizing a vessel to engage in the coasting trade within a state are construed as not manifesting an intention upon the part of Congress to interfere with the power of the state to obstruct the navigable waters within its limits, but only to authorize their navigation by such vessel for the purposes of such trade, so long as they are navigable. *Hatch v. Wallamet Iron Bridge Co.*, C.C.Or.1881, 6 F. 326.

3. Validity and operation of state laws

State law relating to selling property retaken by conditional vendor was not in conflict with federal laws requiring enrollment and recording of vessels. *James Stewart & Co. v. Rivara*, N.Y. 1927, 47 S.Ct. 718, 274 U.S. 614, 71 L.Ed. 1234.

Steam tugs engaged in the business of towing vessels from the Chicago river into the harbor and lake, and in bringing vessels from the lake into the river, are engaged in interstate and foreign commerce; and if they possess a license to engage in the coasting and foreign trade, they cannot be compelled to pay any further license fee to the city of Chicago, and a city ordinance requiring the same is void and such exaction of a license fee cannot be supported upon the ground that the city of Chicago had from time to time expended money in deepening the Chicago river for navigation purposes, when the ordinance does not profess to require the license fee on any such ground, and no suggestion is made that any special benefit has arisen, or can arise, to such tugs, by such deepening of the river. *Harman v. City of Chicago*, 1893, 13 S.Ct. 306, 147 U.S. 396, 37 L.Ed. 216.

The enrollment and licensing of a vessel under the laws of the United States, power to enact which is derived from U.S.C.A.Const. Art. 1, § 8, cl. 3, does not of itself exclude the right of a state to exact a license from its own citizens on account of their ownership and use of such property having its situs within the state. *Wiggins Ferry Co. v. City of East St. Louis*, Ill.1882, 2 S.Ct. 257, 107 U.S. 365, 27 L.Ed. 419.

A steamboat employed as a lighter and towboat, sometimes towing vessels beyond the outer bar of the bay and into the Gulf of Mexico several miles, is not engaged exclusively in domestic trade and commerce of the state, and so subject to state regulation by a law conflicting with the Act of Congress on the same subject. *Foster v. Davenport*, Ala. 1859, 63 U.S. 244, 22 How. 244, 16 L.Ed. 248.

An Alabama law requiring owners of steamboats navigating the waters of the state before leaving port to file a statement in writing in the office of the probate judge, setting forth the name of the vessel and of the owner or owners and his or their places of residence, and the interest of each in the vessel, conflicted with Act Feb. 18, 1793 (incorporated in part in this section), in so far as it bore on a vessel which took out a license and was duly enrolled under the Act of Congress for carrying on the coasting trade and plying between New Orleans and cities in Alabama, and hence was unconstitutional and void. *Sinnot v. Davenport*, Ala.1859, 63 U.S. 227, 22 How. 227, 16 L.Ed. 243.

Article 236 of the constitution of Louisiana, which provided that no foreign corporation should do any business in the state without having one or more known places of business, and an authorized agent or agents in the state upon whom process could be served, was null and void, being an attempt on the part of the state to interpose a restriction on navigation, and therefore in conflict with the provisions of Federal laws. *New Orleans & M. Packet Co. v. James*, C.C.La.1887, 32 F. 21.

The place where vessels engaged in domestic commerce are enrolled under the United States shipping regulations has little or no bearing on the question where the vessels are to be assessed for state ad valorem taxes. *American Barge Line Co. v. Cave*, D.C.La.1946, 68 F.Supp. 30, affirmed in part and reversed in part on other grounds 168 F.2d 509, certiorari denied 68 S.Ct. 1529, 334 U.S. 858, 92 L.Ed. 778, reversed on other grounds 69 S.Ct. 432, 336 U.S. 169, 93 L.Ed. 406.

Congress having made no provision in relation to ferries, a ferryboat engaged in ferrying across a river was not engaged in the coasting trade, and the states might exercise the right to license and regulate the same. *U. S. v. The Steam Ferry Boat Wm. Pope*, D.C. Mo.1852, Newb.Adm. 256, 28 Fed.Cas.No. 16,703.

Question whether ordinance imposing privilege tax on operator of steamers conducting pleasure excursions was invalid because operator's steamers were duly licensed by federal government to operate excursions on navigable streams could not be determined, where operator offered no evidence on such question. *Streckfus Steamers v. Klersky*, 1935, 163 So. 830, 174 Miss. 125.

A local license fee exacted of licensed vessels of the United States, for the privilege of towing vessels and transporting freight cars out of or about the

Note 3

harbor of St. Louis, not wharfage compensation, could not be recovered. *St. Louis v. Consolidated Coal Co.*, 1900, 59 S.W. 102, 158 Mo. 342, 81 Am.St.Rep. 310, 51 L.R.A. 850.

The laws of the United States regulating the coasting trade do not confer rights, in the proper sense of that term, but rather impose restrictions, on the trade; and the additional requisition of state statute, which does not obstruct or dispense with any of the requisitions of the acts of Congress, cannot be said to be in conflict with them. *Pilotage Com'rs v. The Cuba*, 1856, 28 Ala. 185.

4. — Taxation

Vessels which, though engaged in interstate commerce, are employed in such commerce wholly within the limits of a state, are subject to taxation in that state, although they may have been registered or enrolled, under this section, at a port outside the limits of the state. *Old Dominion S. S. Co. v. Virginia*, 1905, 25 S.Ct. 686, 198 U.S. 299, 49 L.Ed. 1059, 3 Ann.Cas. 1100.

The enrollment of a vessel does not exempt the owner from taxation for his interest in the vessel as property, upon a valuation of the same as in the case of other personal property. *Wheeling, etc., Transp. Co. v. Wheeling*, W.Va.1879, 99 U.S. 273, 9 Otto 273, 25 L.Ed. 412.

When a vessel is regularly registered in the port to which she belongs, that is to say, "in the port nearest to which owner, husband, or acting and managing owner usually resides", the fact that she may be temporarily in a port of a State, other than that where her home port is, and engaged in lawful commerce—one of a daily line of steamers—between that port and the port of a yet third State, does not cause her to become incorporated into the personal property of such State, and no State but that in which her home port is has dominion over her for the purpose of taxation. *Morgan v. Parham*, 1873, 83 U.S. 471, 16 Wall. 471, 21 L.Ed. 303.

A state has no power to impose a tax on the vessel "at so much per ton of her registered tonnage." *State Tonnage Tax Cases*, Ala.1871, 79 U.S. 204, 12 Wall. 204, 20 L.Ed. 370.

5. Status as vessel of United States

Congress may enroll and license ships and vessels to sail from one port to another in the same state, and it is clear that such ships and vessels are deemed ships and vessels of the United States, and that as such they are entitled to the privileges of ships and vessels employed in the coasting trade. *State*

Tonnage Tax Cases, Ala.1871, 79 U.S. 204, 12 Wall. 204, 20 L.Ed. 370.

Dredge boat which was vessel of character that might be enrolled by laws of United States did not become vessel of the United States until it was in fact enrolled, though built and owned by citizens of United States. *In re Penglase Sand & Gravel Co.*, C.C.A.Ill.1935, 76 F. 2d 593.

In proceeding in bankruptcy by assignee of conditional sales contract for purchase of dredge boat, evidence sustained conclusion that boat had been enrolled under laws of United States and was a vessel of United States as respects necessity of recording assignment of mortgage affecting vessel of United States. *Id.*

A steamer, enrolled and licensed in the office of collector of customs in the port of Detroit under the statutes of the United States, is a vessel of the United States, regardless of what use may be made of her. *Fleming v. Sloane*, 1907, 110 N.W. 933, 147 Mich. 404, 13 Detroit Leg.N. 1029.

The fact that the owner may be using a vessel, enrolled as a vessel of the United States, in violation of a state law, and is liable to a penalty therefor, does not affect the status of the vessel. *Id.*

A foreign-built vessel, wholly owned by citizens of the United States, and having no foreign registry, is entitled by virtue of her American ownership to carry the American flag and to the protection of the American government. 1880, 16 Op.Atty.Gen. 533.

6. Right to engage in coasting trade

The words "coasting trade" are not intended to be strictly limited to trade between ports in adjoining districts, and they include the domestic trade of the United States between the ports of Porto Rico and those upon the mainland. *Huus v. New York, etc., Steamship Co.*, N.Y.1901, 21 S.Ct. 827, 182 U.S. 395, 45 L. Ed. 1146.

Vessels, though plying wholly within the waters of a state, when registered under the federal statutes may carry on coasting trade. *Cox v. Lott*, Ala.1871, 79 U.S. 204, 12 Wall. 204, 20 L.Ed. 370.

"Coasting trade" means commercial intercourse carried on between different districts in different states, between different districts in the same state, and between different places in the same district, on the seacoast or on a navigable river. *Ravesties v. U. S.*, C.C.Ala. 1889, 37 F. 447. See, also, *North River Steam Boat Co. v. Livingston*, N.Y.1825, 3 Cow. 713.

In the statutes of the United States relating to commerce, navigation, and revenue, the words "coasting trade" and "coastwise trade" are used synonymously. *Ravesies v. U. S.*, C.C.Ala.1889, 37 F. 447.

The phrase "coasting trade," as used in the statutes, does not apply to ferrying across a river. *U. S. v. The James Morrison*, D.C.Mo.1846, Fed.Cas.No.15,465.

The "coasting trade" within regulation of Congress embraces commercial intercourse between places in the same district or state on a navigable river. *Shannon v. Streckfus Steamers*, 1899, 131 S.W.2d 833, 279 Ky. 649.

Foreign vessels owned wholly by citizens of the United States may be lawfully engaged in the coasting trade; but the cargoes must consist of domestic goods other than distilled spirits. 1843, 4 Op.Atty.Gen. 189.

Subjects of foreign powers were, by Act Mar. 1, 1817, c. 31, incompetent to import any goods, wares, or merchandise from one port of the United States to another in any vessel of which they might be the owners in whole or in part; yet citizens of the United States were untouched by the Act, and left to the enjoyment of the privileges conferred by Act Dec. 31, 1792, c. 1 (incorporated largely in chapter 2 of this title) and this Act. *Id.*

7. Necessity of enrollment or license

Every vessel of the United States must have a register or an enrollment, the former for foreign trade, the latter for domestic commerce, and without them, and without the right one, a vessel is entitled to no protection under the United States laws. *Badger v. Gutierrez*, La. 1884, 4 S.Ct. 563, 111 U.S. 734, 28 L.Ed. 581.

The statutes only require enrollment and license for vessels employed on the navigable waters of the United States. *U. S. v. Montello*, Wis.1871, 78 U.S. 411, 11 Wall. 411, 20 L.Ed. 191.

The enrollment of a vessel seems not to be necessary to make a title under bill of sale valid, but to entitle the vessel to the character and privileges of an American vessel. *Hozey v. Buchanan*, La.1842, 41 U.S. 215, 16 Pet. 215, 10 L.Ed. 941.

Vessel having only a number issued under section 283 of this title may not be employed in trade. *Stephens v. U. S.*, C.C.Ala.1929, 30 F.2d 236.

Act July 7, 1838, did not apply to vessels which were not theretofore required to be enrolled and licensed for the

coasting trade. *U. S. v. The William Pope*, D.C.Mo.1952, Fed.Cas.No.16,703.

No registered ship or vessel, while she remains registered, can engage in the whale fisheries; but she must surrender her register, and be enrolled and licensed for the fisheries. *U. S. v. Rogers*, C.C.R.I.1838, Fed.Cas.No.16,189.

Every vessel of the United States must have a register or an enrollment, the former for foreign trade and the latter for domestic commerce, and without them and without the right one, a vessel is entitled to no protection under the United States laws and is liable to seizure for such violation of law. *Braga v. Braga*, 1943, 51 N.E.2d 429, 314 Mass. 666.

Vessels engaged in fur seal fishing in waters other than those covered by the award of the Paris Tribunal and Act April 6, 1894, 28 Stat. 52 [superseded], were not required to be licensed. 1895, 21 Op.Atty.Gen. 239.

8. — Ferryboats

Ferryboats running under a ferry franchise granted by the state were not required to be enrolled under the Act of 1852. *Elizabethport & N. Y. Ferry Co. v. U. S.*, C.C.N.Y.1863, Fed.Cas.No.4,362.

A license from the United States is not necessary to authorize the owners of a steamboat to employ her in ferrying. *U. S. v. The William Pope*, D.C.Mo.1852, Fed.Cas.No.16,703.

Ferryboats, prior to Act July 7, 1838, were not required to be enrolled and licensed. *Id.*

Act July 7, 1838, requiring enrollment of steamboats being founded on the constitutional power of Congress to regulate foreign and interstate commerce, did not apply to a ferryboat plying wholly within a state. *U. S. v. The James Morrison*, D.C.Mo.1846, Fed.Cas.No.15,465. See, also, *U. S. v. Jackson*, D.C.N.Y.1841, Fed.Cas. No.15,458.

9. Privileges of enrolled or licensed vessels generally

This section contained a positive enactment that the vessels it described shall be entitled to the privileges of ships or vessels employed in the coasting trade, and these privileges cannot be separated from the trade and cannot be enjoyed unless the trade may be prosecuted. *Gibbons v. Ogden*, N.Y.1824, 22 U.S. 1, 9 Wheat. 1, 6 L.Ed. 23.

The protection of a coasting license does not extend beyond the vessel licensed, and does not authorize the tow-

Note 9

ing of other vessels. *People v. Sperry*, N.Y.1867, 50 Barb. 170.

A coasting license under the laws of the United States does not authorize an invasion, by a steamboat so licensed, of an exclusive privilege under the statutes of New York of navigating the waters of the state with steamboats. *North River Steamboat Co. v. Hoffman*, N.Y. 1821, 5 Johns.Ch. 300.

10. Evidence of ownership

The enrollment of a steamboat at the custom house when it was under the control of the Confederate government was inadmissible, if objected to, to prove title to the boat; but it was evidence in the case, though of not much weight, when received without objection. *Succession of Alexander*, 1866, 18 La.Ann. 337.

An enrollment of a vessel by her master in his name and others is evidence of the interest of the latter in the vessel. *Hall v. The Insurance Co.*, Pa.1859, 3 Phila. 331.

The enrollment, as well as the registry, of a vessel, is not evidence of property, except so far as it is confirmed by some auxiliary circumstance showing that it was made by the authority or assent of the person named in it, and who is sought to be charged as owner. *Dyer v. Snow*, 1859, 47 Me. 254.

The enrollment is evidence, but not conclusive evidence, of ownership, and it may also be shown that the person

whose name is enrolled as master has ceased to be such. *Jordan v. Young*, 1853, 37 Me. 276.

The enrollment and bill of sale only prove who were owners at the time of the registry. *Colson v. Bonzey*, 1830, 6 Me. 474, 6 Greenl. 474.

Where a steamboat was enrolled at the port of New Orleans, according to act of Congress, upon the oath of A. and the certificate of enrollment stated that B., C., and others were joint owners of the boat with A., the certificate was not evidence to establish the ownership of the boat, as against any person except him on whose oath the enrollment was made. *Miller v. Hill*, 1850, 29 Tenn. 470, 10 Humph. 470.

In an action against the owners of a vessel on a contract made by the master, a copy of the enrollment of the vessel, made on the oaths of the defendants, is sufficient evidence of their ownership at the time such enrollment was made. *Hacker v. Young*, 1833, 6 N.H. 95.

The enrollment and bill of sale are not conclusive evidence as to ownership of a vessel. *Bixby v. Franklin Ins. Co.*, 1829, 25 Mass. 86, 8 Pick. 86.

11. Enforcement of maritime liens

That a vessel is not enrolled or licensed does not affect the question of jurisdiction to enforce a maritime lien against her. *The George W. Elder*, D. C.Or.1912, 196 F. 137, affirmed 206 F. 268.

§ 252. Vessels which may be enrolled

In order for the enrollment of any vessel, she shall possess the same qualifications, and the same requirements in all respects shall be complied with, as are required before registering a vessel; and the same powers and duties are conferred and imposed upon all officers, respectively, and the same proceedings shall be had, in enrollment of vessels, as are prescribed for similar cases in registering; and vessels enrolled, with the masters or owners thereof, shall be subject to the same requirements as are prescribed for registered vessels. R.S. § 4312.

Historical Note

Derivation. Act Feb. 13, 1793, c. 8, § 2, 1 Stat. 305.

Cross References

Canal boats or boats employed on internal waters or canals of any state, exemption from requirements of this section, see section 336 of this title.

Registry and recording of vessels, see section 11 et seq. of this title.

Vessels purchased, chartered, or leased from Secretary of Commerce, enrollment, see section 806 of this title.

Notes of Decisions

Generally 1
 Bonds 3
 Effect of record 3
 Enrollment and registry distinguished 3
 Ferryboats 5
 Forfeitures 10
 Home port 2
 Omission in enrollment 7
 Place of enrollment 6
 Vessels which may be enrolled 4

1. Generally

The law as to the enrollment of vessels is the same under this section of the United States as it is in reference to the registry of vessels. *U. S. v. Gilbert*, C.C.A.Fla.1942, 126 F.2d 206. See, also, *The Lotus*, No. 2, D.C.Ala.1886, 26 F. 639.

2. Home port

This section does not control as to the meaning to be given "Home port" in laws relating to importation of merchandise. *The Lotus* No. 2, D.C.Ala. 1886, 26 F. 637.

3. Enrollment and registry distinguished

While in common understanding the words "registered" and "enrolled" are sometimes used interchangeably, as applied to vessels, they do not mean the same thing, the provision of subsection 6, § 4, par. J, Tariff Act 1913 (repealed), according free entry to repairs for vessels "registered" under the laws of the United States," extended only to vessels "registered" under sections 11 and 25 of this title, and did not include those "enrolled" under this section and section 259 of this title. *Bolinders Co. v. U. S.*, 1921, 11 Ct.Cust.App. 69.

4. Vessels which may be enrolled

Steamboats plying on streams wholly within a state are entitled to be enrolled and licensed under the federal laws, and are entitled to the privileges secured to such vessels. *Cox v. Lott*, Ala.1871, 79 U.S. 204, 12 Wall. 204, 20 L.Ed. 370.

A vessel belonging to a domestic corporation is entitled to registry or enrollment, even though some stock of the company be owned by aliens. 1911, 29 Op.Att'y.Gen. 188.

Steamboats owned by citizens of the United States may be enrolled and licensed, although they may have been employed in the rebel service under papers issued by the rebel authorities. 1865, 11 Op.Att'y.Gen. 359.

5. Ferryboats

An injunction protecting the exclusive privilege of a ferry does not conflict with the right of a boat to carry passengers or goods in the ordinary prosecution of commerce without the regularity or purpose of ferry trips, but the remedy applies only to one which is run openly and avowedly as a ferryboat, though enrolled under the laws of the United States and licensed thereunder for the coasting trade. *Conway v. Taylor*, Ky.1862, 68 U.S. 603, 1 Black 603, 17 L.Ed. 191.

6. Place of enrollment

The place where vessels engaged in domestic commerce are enrolled under the United States shipping regulations has little or no bearing on the question where the vessels are to be assessed for ad valorem taxes. *American Barge Line Co. v. Cave*, D.C.La.1946, 68 F.Supp. 30, affirmed in part and reversed in part on other grounds 166 F.2d 509, certiorari denied 68 S.Ct. 1529, 334 U.S. 858, 92 L. Ed. 1773, reversed on other grounds 69 S.Ct. 432, 336 U.S. 169, 93 L.Ed. 406.

A corporation of one state, which owns a vessel with which it does business in another state, where it has an office, may there enroll it and being enrolled there, a mortgage on it recorded where it is enrolled is valid. *Moore v. Lincoln Park & Steamboat Consol. Co.*, 1900, 46 A. 857, 196 Pa.St. 519.

7. Omission in enrollment

An omission in the enrollment of an American vessel does not make her foreign, but only deprives her of American privileges. *Fox v. Paine*, D.C.Pa. 1839, Fed.Cas.No.5,014.

8. Bonds

Collector had no authority to take bond, conditioned that vessel should not proceed to a foreign port without being licensed for the cod or whale fishery, and without obtaining a permit to touch and trade at a foreign port, and without previously surrendering her certificate of enrollment, see *U. S. v. Hipkin*, D.C.Va.1808, Fed.Cas.No.15,371.

9. Effect of record

In view of record required by this section charter party, signed by defendant as agent of owner of vessel named, sufficiently showed fact of agency and identified principal, to relieve agent from personal liability. *Hudson Trading Co. v. Hasler & Co.*, D.C.N.Y.1928, 11 F.2d 668.

10. Forfeitures

An enrolled vessel sailing under a fishing license is not liable to forfeiture because her part owner, a citizen of the United States, resides in a foreign country. *The Henry*, D.C.Me.1867, Fed.Cas. No.6,373.

§ 253. Enrollment of vessels owned by corporations

Enrollments and licenses for vessels owned by any incorporated company may be issued in the name of the president or secretary of such company; and such enrollments or licenses shall not be vacated or affected by any sale of shares of stock in such company. R.S. § 4313.

Historical Note

Derivation. Act Mar. 3, 1825, c. 99, § 1, 4 Stat. 129.

Cross References

Consolidation of forms of enrollment and of license, see section 260 of this title.

Notes of Decisions

1. Generally

That vessels belonging to corporation were enrolled in corporate name did not invalidate ship mortgage, as this section

is permissive only. *Collier Advertising Service v. Hudson River Day Line*, D.C.N.Y.1936, 14 F.Supp. 335.

§ 254. Oath as to corporate or individual ownership

Previous to granting enrollment and license for any vessel owned by any incorporated company, or by an individual or individuals, the president or secretary of such company, or any other officer or agent thereof, duly authorized by said company in writing, attested by the corporate seal thereof, to act in its behalf, or the managing owner, or his agent duly authorized by power of attorney, when such vessel is owned by an individual or individuals, shall swear to the ownership of such vessel without designating the names of the persons composing such company, when such vessel is owned by a corporation, which oath shall be deemed sufficient without requiring the oath of any other person interested or concerned in such vessel. R.S. § 4314; June 24, 1902, c. 1155, § 2, 32 Stat. 399.

Historical Note

Derivation. Act Mar. 3, 1825, c. 99, § 4, 4 Stat. 129.

Codification. R.S. § 4314, as originally enacted, read as follows: "Previously to granting enrollment and license for any vessel, owned by any company, the president or secretary of such company

shall swear to the ownership of such vessel, by such company, without designating the names of the persons composing such company; which oath shall be deemed sufficient, without requiring the oath of any other person interested or concerned in such vessel."

Notes of Decisions**1. Authorization**

Irregularity in enrollment of vessels belonging to corporation, in that ownership oath was made by vice president and was without specific written authori-

ty attested by corporate seal as required by statute, was not such as to invalidate ship mortgage. *Collier Advertising Service v. Hudson River Day Line*, D.C.N.Y. 1936, 14 F.Supp. 335.

§ 255. New enrollment on death, removal, or resignation of corporate officers

Upon the death, removal, or resignation of the president or secretary of any incorporated company owning any steamboat or vessel, a new enrollment and license shall be taken out for such steamboat or vessel. R.S. § 4315; Feb. 27, 1877, c. 69, § 1, 19 Stat. 251.

Historical Note

Derivation. Act Mar. 3, 1825, c. 99, § 3, 4 Stat. 129.

Codification. Act Feb. 27, 1877 inserted the words "steamboat or."

§§ 256, 257. Repealed. Feb. 28, 1933, c. 131, § 1, 47 Stat. 1349.

Historical Note

Sections, R.S. §§ 4316, 4317, related to the enrollment of steamships owned by

resident aliens and the giving of bond by such owners.

§ 258. Enrollment of vessels on frontiers

Any vessel of the United States, navigating the waters on the northern, northeastern, and northwestern frontiers, otherwise than by sea, shall be enrolled and licensed in such form as other vessels; such enrollment and license shall authorize any such vessel to be employed either in the coasting or foreign trade on such frontiers, and no certificate of registry shall be required for vessels so employed. Such vessel shall be, in every other respect, liable to the regulations and penalties relating to registered and licensed vessels. R.S. § 4318; Feb. 27, 1877, c. 69, § 1, 19 Stat. 251.

Historical Note

Derivation. Act June 17, 1864, c. 130, § 1, 13 Stat. 134.

Codification. Act Feb. 27, 1877 substituted the word "registry" for "register" near the end of the first sentence.

Notes of Decisions

Foreign trade 3
Fraudulent enrollment 2
Loss of status 1
Observance of revenue laws 4
Sale to alien 3
Tonnage tax 5

1. Loss of status

A vessel of the United States, duly registered, does not lose her status as such while in the Detroit river. *Fleming v. Sloane*, 1907, 110 N.W. 933, 147 Mich. 404, 13 Detroit Leg.N. 1029.

2. Fraudulent enrollment

Act March 2, 1831 (section 3 of which was similar to this section), made the certificate of enrollment equivalent to both registry and enrollment and by the proviso to its third section the Act applied the penalty of forfeiture contained in section 27 of Act Dec. 31, 1792 (section 60 of this title) to an enrollment having the effect of a register fraudulently obtained. *The Mohawk*, Mich.1866, 70 U.S. 566, 3 Wall. 566, 18 L.Ed. 67.

3. Foreign trade

A vessel not enrolled and licensed, but engaged exclusively in the foreign trade on Lake Champlain, does not become forfeit by having foreign goods on board. *U. S. v. The Margaret Yates*, D.C.Vt.1849, Fed.Cas.No.15,720.

4. Observance of revenue laws

A vessel enrolled or licensed under Act March 2, 1831 (containing provisions similar to this section), became under the protection of the laws of the United States, and bound to observe the revenue laws. *U. S. v. Sweeney*, D.C.Wis. 1859, Fed.Cas.No.16,426.

5. Tonnage tax

A steamer, enrolled and licensed under this section for the coasting or foreign trade, which cleared Cleveland, Ohio, for Two Harbors, Mich., without cargo or passengers from Cleveland to Two Harbors, but with cargo from Cleveland to the intermediate port of Ft. William, Canada, which cargo she discharged at the latter place, and then proceeded to Two Harbors, is within the provisions of section 123 of this title, and is not amenable to the tonnage tax imposed by section 121 of this title. (1910) 28 Op.Atty.Gen. 277.

6. Sale to alien

The vessels included within Act 1831, § 3 (similar to this section) were not subject to forfeiture under Act 1792, § 16 (section 41 of this title) relating to sales to foreigners without delivering up the certificate of registry. *U. S. v. The Sciota*, D.C.N.Y.1862, Fed.Cas. No.16,240.

Where a vessel was enrolled under the Act of 1831 "to regulate the foreign and coasting trade on the northern, north-eastern, and northwestern frontiers," but not licensed, a sale to an alien was no forfeiture. *Wilkes v. People's Fire Ins. Co.*, N.Y.1859, 19 N.Y. 184.

§ 259. Form of enrollment

The record of the enrollment of a vessel shall be made, and an abstract or copy thereof granted, as nearly as may be in the following form: Enrollment. In conformity to Title L, "Regulation of Vessels in Domestic Commerce", of the Revised Statutes of the United States, (inserting here the name of the person, with his occupation and place of abode, by whom the oath or affirmation is to be made), having taken and subscribed the oath (or affirmation) required by law, and having sworn (or affirmed) that he (or she, and if more than one owner adding the words "together with," and the name or names, occupation or occupations, place or places of abode of the owner or owners, and the part or proportion of such vessel belonging to each owner) is (or are) a citizen (or citizens) of the United States, and sole owner (or owners) of the ship or vessel called the (inserting here her name), of (inserting here the name of the port to which she may belong), whereof (inserting here the name of the master) is at present master, and is a citizen of the United States, and that the said ship or vessel was (inserting here when and where built), and (inserting here the name and office, if any, of the person by whom she shall have been surveyed and measured), having certified that the said ship or vessel has (inserting here the number of decks), and (inserting here the number of masts), and that her length is (inserting here the number of feet), her breadth (inserting here the

number of feet), her depth (inserting here the number of feet), and that she measures (inserting here her number of tons); that she is (describing here the particular kind of vessel, whether ship, brigantine, snow, schooner, sloop, or whatever else, together with her build, and specifying whether she has any or no gallery or head), and the said (naming the owner or the master, or other person acting in behalf of the owner or owners by whom the certificate of measurement shall have been countersigned), having agreed to the description and measurement above specified, the said ship or vessel has been duly enrolled at the port of (naming the port where enrolled). Given under my hand and seal, at (naming the said port), this (inserting the particular day) day of (naming the month), in the year (specifying the number of the year, in words, at length). R.S. § 4319; Feb. 27, 1877, c. 69, § 1, 19 Stat. 251; Jan. 16, 1895, c. 24, § 1, 28 Stat. 624.

Historical Note

Derivation. Acts Feb. 18, 1793, c. 8, § 2, 1 Stat. 305; July 29, 1850, c. 27, § 5, 9 Stat. 441.

References in Text. For distribution of "Title L, 'Regulation of Vessels in Domestic Commerce,' of the Revised Statutes of the United States", R.S. §§ 4311-4390, referred to in the text, see Tables.

Codification. Act Feb. 27, 1877 inserted after the words "as nearly as may be in the following," the word

"form," and substituted the word "title" for "act" in the phrase "according to the said title."

Prior to incorporation into the Code, the words last quoted were preceded by the words "and sufficient security having been given." R.S. § 4145, requiring a bond as a condition precedent to registry, and seemingly made applicable to enrollments by section 4312 (section 252 of this title), was repealed by Act Jan. 16, 1895.

Cross References

Canal boats or boats employed on internal waters or canals of any state, exemption from requirements of this section, see section 336 of this title.

Consolidation of forms relating to enrollment and license, see section 260 of this title.

Notes of Decisions

Bond §

Delivery 2

Effect of record 4

Oath of owner 1

1. Oath of owner

The enrollment is void where the oath of one of the owners has not been previously taken and subscribed in conformity with Act Feb. 18, 1793, § 2 (incorporated in part in this section). *U. S. v. Bartlett*, D.C.Me.1839, Fed.Cas.No. 14,532.

2. Delivery

An enrollment and license duly executed does not require delivery to give it validity. *U. S. v. The Planter*, D.C. Mo.1852, Fed.Cas.No.16,054.

3. Bond

Collector had no authority to take bond under Act Feb. 18, 1793 (incorporated in part in this section), providing for the enrollment and licensing of vessels employed in the coasting trade and fisheries. *U. S. v. Hipkin*, D.C.Va. 1808, Fed.Cas.No.15,371.

4. Effect of record

In view of record required by this section charter party, signed by defendant as agent of owner of vessel named, sufficiently showed fact of agency and identified principal, to relieve agent from personal liability. *Hudson Trading Co. v. Hasler & Co.*, D.C.N.Y. 1926, 11 F.2d 666.

§ 260. Consolidation of forms of enrollment and of license

The Commissioner of Customs is authorized and directed from time to time to consolidate into one document in the case of any vessel of the United States the form of enrollment prescribed by section 259 of this title and the form of license prescribed by section 263 of this title, and such consolidated form shall be issued to a vessel of the United States in lieu of the separate enrollment and license prescribed by law on April 24, 1906, and shall be deemed sufficient compliance with the requirements of laws relating to the subject. Apr. 24, 1906, c. 1865, § 1, 34 Stat. 136; Feb. 29, 1912, c. 47, 37 Stat. 70; Mar. 4, 1913, c. 141, § 1, 37 Stat. 736; June 30, 1932, c. 314, §§ 501, 502(b), 47 Stat. 415; May 27, 1936, c. 463, § 1, 49 Stat. 1380; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Codification. Section 4 of Act Apr. 24, 1906 provided that such Act should take effect on and after Jan. 1, 1907.

Act Feb. 29, 1912 struck out the words "of twenty net register tons or over" which followed the words "any vessel of the United States."

Upon incorporation into the Code, the words "Secretary of Commerce" were substituted for "Secretary of Commerce and Labor" to conform to Act Mar. 4, 1913, which provided that the Secretary of Commerce and Labor should be called the Secretary of Commerce.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31,

1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Commissioner of Customs, referred to in this section, is an officer of the Treasury Department.

"The Commissioner of Customs" was substituted for "Under the direction of the Secretary of Commerce the Director of the Bureau of Marine Inspection and Navigation" on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

"Commissioner of Navigation" was changed to "Director, Bureau of Navigation and Steamboat Inspection", and then to "Director of the Bureau of Marine Inspection and Navigation" by Acts June 30, 1932 and May 27, 1936. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

§ 261. Compensation of customs officers for enrollment and license not affected

Historical Note

Codification. Section, Act Apr. 24, 1906, c. 1865, § 3, 34 Stat. 138, provided that sections 260 and 267 of this title should not be construed to amend any

law in force on April 24, 1906, concerning the compensation of officers of the customs for service connected with the enrollment and license of vessels.

§ 262. License; oath not to defraud revenue; oath as to citizenship

No licensed vessel shall be employed in any trade whereby the revenue laws of the United States shall be defrauded. The master of every such vessel shall swear that he is a citizen of the United States, and that such license shall not be used for any other vessel or any other employment than that for which it was specially granted, or in any trade or business whereby the revenue of the United States may be defrauded; and if such vessel be less than twenty tons burden, the husband or managing owner shall swear that she is wholly the property of citizens of the United States; whereupon it shall be the duty of the collector of the district comprehending the port whereto such vessel may belong to grant a license. R.S. § 4320; Feb. 27, 1877, c. 69, § 1, 19 Stat. 251; Jan. 16, 1895, c. 24, § 3, 28 Stat. 625.

Historical Note

Derivation. Act Feb. 18, 1793, c. 8, § 4, 1 Stat. 306.

Codification. R.S. § 4320, as originally enacted, was as follows: "In order to the licensing of any vessel for carrying on the coasting-trade or fisheries, the husband, or managing owner, together with the master thereof, with one or more sureties to the satisfaction of the collector granting the same, shall become bound to pay to the United States, if such vessel be of the burden of five tons and less than twenty tons, the sum of one hundred dollars; and if twenty tons and not exceeding thirty tons, the sum of two hundred dollars; and if above thirty tons and not exceeding sixty tons, the sum of five hundred dollars; and if above sixty tons, the sum of one thousand dollars, in case it shall appear, within two years from the date of the bond, that such vessel has been employed in any trade whereby the revenue of the United States has been defrauded, during the time the license

granted to such vessel remained in force. The master of such vessel shall also swear that he is a citizen of the United States, and that such license shall not be used for any other vessel or any other employment than that for which it is specially granted, or in any trade or business whereby the revenue of the United States may be defrauded; and if such vessel be less than twenty tons burden, the husband or managing owner shall swear that she is wholly the property of citizens of the United States; whereupon it shall be the duty of the collector of the district comprehending the port whereto such vessel may belong, the duty of six cents per ton being first paid, to grant a license."

It was amended by Act Feb. 27, 1877, by striking out the words "the duty of six cents per ton being first paid."

It was again amended by Act Jan. 16, 1895, to read as set forth here.

Cross References

Canal boats or boats employed on internal waters or canals of any state, exemption from requirements of this section, see section 336 of this title.

Notes of Decisions

Operation of license 1
Use of vessel 2

1. Operation of License

A license for carrying on the coasting trade granted under this section con-

veys as explicitly to the licensee the authority the act intended to give as if it had been inserted in the act itself, and transfers to the licensee all the right which the grantor can transfer to do what is within the terms of the license. *Gibbons v. Ogden*, N.Y. 1824, 22 U.S. 1, 9 Wheat. 1, 6 L.Ed. 23.

2. Use of vessel

A fishing vessel licensed to catch cod-fish cannot catch mackerel, except as bait, or provisions for the crew. *The Nymph*, C.C.Me.1834, Fed.Cas.No.10,388.

See, also, *U. S. v. The Reindeer*, C.C.R.I. 1848, Fed.Cas.No.16,145; *U. S. v. The Parynthia Davis*, C.C.Me.1860, Fed.Cas.No. 16,003; *U. S. v. The Parynthia Davis*, D.C.Me.1858, Fed.Cas.No.16,004.

§ 263. Form of license; coastal vessels of five tons or more; vessels operating on Great Lakes

The form of a license for carrying on the coasting trade or fisheries shall be as follows:

"License for carrying on the (here insert 'coasting trade', 'whale fishery', 'mackerel fishery', or 'cod fishery', as the case may be).

"In pursuance of Title L, 'Regulation of Vessels in Domestic Commerce', of the Revised Statutes of the United States, (inserting here the name of the husband or managing owner, with his occupation and place of abode, and the name of the master, with the place of his abode), having sworn that the (insert here the description of the vessel, whether ship, brigantine, scow, schooner, sloop, or whatever else she may be), called the (insert here the vessel's name), whereof the said (naming the master) is master, burden (insert here the number of tons, in words) tons, as appears by her enrollment, dated at (naming the district, day, month, and year, in words at length, but if she be less than twenty tons, insert, instead thereof, 'proof being had of her admeasurement'), shall not be employed in any trade, while this license shall continue in force, whereby the revenue of the United States shall be defrauded, and having also sworn (or affirmed) that this license shall not be used for any other vessel, or for any other employment, than is herein specified, license is hereby granted for the said (inserting here the description of the vessel) called the (inserting here the vessel's name), to be employed in carrying on the (inserting here 'coasting trade', 'whale fishery', 'mackerel fishery', or 'cod fishery', as the case may be), for one year from the date hereof, and no longer. Given under my hand and seal, at (naming the said district), this (inserting the particular day) day of (naming the month), in the year (specifying the number of the year in words at length):" *Provided*, That vessels of five net tons and over entitled under the laws of the United States to be enrolled and licensed or licensed for the coasting trade may be licensed for the "coasting trade and mackerel fishery", and shall be deemed to have sufficient license for engaging in the coasting trade and the taking of fish of every description, including shellfish: *Provided further*, That the provisions of sections 310 and 311 of this title shall be, and are made applicable to vessels so licensed: *And provided further*, That vessels operating on the Great Lakes and their connecting and tributary waters under enrollment and license issued in conformity with the provisions of section 258 of this title, shall be deemed to have sufficient license for engaging in the taking of fish of every description within such waters without change in the form of enrollment and license prescribed

under the authority of that section. R.S. § 4321; May 20, 1936, c. 434, 49 Stat. 1367.

Historical Note

Derivation. Acts Feb. 18, 1793, c. 8, § 4, 1 Stat. 307; May 24, 1828, c. 119, 4 Stat. 312.

References in Text. For distribution of "Title L, 'Regulation of Vessels in Domestic Commerce' of the Revised Statutes of the United States," R.S. §§ 4311-4390, referred to in the text, see Tables.

Codification. R.S. § 4321 was amended by Act Feb. 28, 1887, c. 288, § 2, 24 Stat. 435, for a period of five years from

and after March 1, 1888, by inserting before the last sentence the following: "This license does not grant the right to fish for mackerel, other than for what is known as Spanish mackerel, between the first day of March and the first day of June, inclusive, of this year." The time during which this amendment was to continue in force having expired, the clause inserted by said amendment has been omitted.

Cross References

Canal boats or boats employed on internal waters or canals of any state, exemption from requirements of this section, see section 336 of this title.

Consolidation of forms of enrollment and license, see section 260 of this title.

Penalty for violation of license, see section 325 of this title.

Notes of Decisions

1. Fisheries, license for

A fishing vessel licensed to catch cod-fish cannot catch mackerel except as bait or as provision for the crew; and this incidental privilege ought to be exercised fairly and in good faith. *U. S. v. Schooner Paryntha Davis*, C.C.Me. 1860, 1 Cliff. 532, 27 Fed.Cas.No.16,003.

Since the Act of May 24, 1828 (incorporated in this section), authorizing a special license for the mackerel fishery, that is a trade distinct from the cod fishery. *U. S. v. The Paryntha Davis*, D.C. Me.1858, 3 Ware 159, 27 Fed.Cas.No.16,004, affirmed 1 Cliff. 532, 27 Fed.Cas.No.16,003.

Whether cod fishing and mackerel fishing are under the statutes and in fact different trades or not, vessels under a license to catch cod will not be forfeited by catching mackerel so long as the catching of mackerel is incidental merely, and not the main object of pursuit; to work a forfeiture under the statutes the old employment must have been abandoned and a new trade must be permanently and exclusively pursued. *U. S. v. The Reindeer*, C.C.R.I.1848, 14 Law Rep. 235, 27 Fed.Cas.No.16,145.

§ 264. Exchange of enrollment and registry

The collectors of the several districts may enroll and license any vessel that may be registered, upon such registry being given up, or may register any vessel that may be enrolled, upon such enrollment and license being given up. R.S. § 4322.

Historical Note

Derivation. Act Feb. 18, 1793, c. 8, § 3, 1 Stat. 306.

Cross References

Canal boats or boats employed on internal waters or canals of any state, exemption from requirements of this section, see section 336 of this title.

Notes of Decisions

Generally 1

Issuance of enrollment 2

Taxation 3

1. Generally

A register may be exchanged for an enrollment. *Badger v. Gutierrez*, La. 1884, 4 S.Ct. 563, 111 U.S. 734, 28 L.Ed. 581.

2. Issuance of enrollment

Where an enrollment is improperly issued, the owner is entitled to a proper issue of another, or to the return of his register. *Badger v. Gutierrez*, La. 1884, 4 S.Ct. 563, 111 U.S. 734, 28 L.Ed. 581.

3. Taxation

When a vessel is regularly registered in the port to which she belongs, that is to say, "in the port nearest to which her owner, husband, or acting and managing owner usually resides", the fact that she may be temporarily in a port of a State, other than that where her home port is, and engaged in lawful commerce—one of a daily line of steamers—between that port and the port of a yet third State, does not cause her to become incorporated into the personal property of such State, and no State but that in which her home port is has dominion over her for the purpose of taxation. *Morgan v. Parham*, Ala. 1873, 83 U.S. 471, 16 Wall. 471, 21 L.Ed. 303.

§ 265. Exchange; when vessel is in another district

When any vessel shall be in any other district than the one to which she belongs, the collector of such district, on the application of the master thereof, and upon his taking an oath that, according to his best knowledge and belief, the property remains as expressed in the register or enrollment proposed to be given up, shall make the exchange of an enrollment for a register or a register for an enrollment; but in every such case, the collector to whom the register or enrollment and license may be given up shall transmit the same to the Commissioner of Customs; and the register, or enrollment and license, granted in lieu thereof, shall, within ten days after the arrival of such vessel within the district to which she belongs, be delivered to the collector of the district, and be by him canceled. If the master shall neglect to deliver the register or enrollment and license within such time, he shall be liable to a penalty of \$100. R.S. § 4323; July 5, 1884, c. 221, § 2, 23 Stat. 119; June 30, 1932, c. 314, §§ 501, 502(b), 47 Stat. 415; May 27, 1936, c. 463, § 1, 49 Stat. 1380; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Derivation. Act Feb. 18, 1793, c. 8, § 3, 1 Stat. 306.

Codification. Upon incorporation into the Code, the words "Commissioner of Navigation" were substituted for "Register of the Treasury" to conform to Act July 5, 1884. See section 2 of this title.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department,

were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Commissioner of Customs, referred to in this section, is an officer of the Treasury Department.

Words "Commissioner of Navigation" were changed to "Director, Bureau of Navigation and Steamboat Inspection", then to "Director of the Bureau of Marine Inspection and Navigation" and finally to "Commissioner of Customs" on authority of Acts June 30, 1932, and

May 27, 1936, and 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Cross References

Canal boats or boats employed on internal waters or canals of any state, exemption from requirements of this section, see section 336 of this title.

Notes of Decisions

Penalty 2

Touching port to land passengers 1

1. Touching port to land passengers

The mere touching at a port to land passengers when on the way to another port will not make a case within this section. *U. S. v. Shackford*, D.C.Me. 1830, Fed.Cas.No.16,263.

2. Penalty

The master is not liable for the penalty for the nondelivery of the temporary register unless there be an arrival at the port to which the vessel belonged, not by accident or from necessity, but intentionally, as one of the termini of the voyage. *U. S. v. Shackford*, C.C.Me.1830, Fed.Cas.No.16,262.

§ 266. Expiration of license

No license, granted to any vessel, shall be considered in force any longer than such vessel is owned, and of the description set forth in such license, or for carrying on any other business or employment than that for which she is specially licensed. R.S. § 4324.

Historical Note

Derivation. Act Feb. 18, 1793, c. 8, § 5, 1 Stat. 307.

Cross References

Canal boats or boats employed on internal waters or canals of any state, exemption from requirements of this section, see section 336 of this title.

Notes of Decisions

Failure to renew license after sale 2
Transfer of interest or ownership 1

1. Transfer of interest or ownership

Transfer to an alien or nonresident of an interest in licensed vessel makes vessel liable to forfeiture, though such transfer makes the license void under this section. *Braga v. Braga*, 1943, 51 N.E.2d 429, 314 Mass. 668.

2. Failure to renew license after sale

On the transfer of a registered vessel to a citizen of the United States, the vessel must be registered anew or it

loses its privileges as an American vessel; but a different penalty is imposed by the Enrolling Act (incorporated largely in this chapter) for a neglect to renew a license granted by virtue of that act, and where a vessel has been enrolled and licensed, and prior to the expiration of the time limited by the license it is sold to a citizen of the United States and continues running without a renewal of the license, it becomes liable to port fees and tonnage in every port at which it may arrive, the same as vessels not belonging to the United States. *U. S. v. The Steamboat Forrester*, D.C. Mich.1856, Newb.Adm. §1, 25 Fed.Cas.No. 15,132.

The existence of a custom under which purchasers of vessels previously enrolled and licensed have awaited the expiration of the time limited in the license

before obtaining a renewal of the same would not relieve such vessels from liability to the penalty provided by the Enrolling Act. *Id.*

§ 267. Presentation of license for renewal by indorsement; surrender

The license granted to any vessel shall be presented for renewal by endorsement to the collector of customs of the district in which the vessel then may be within three days after the expiration of time for which it was granted, or, if she be absent at that time, within three days from her first arrival within a district. In case of change of build, ownership, district, trade, or arrival under temporary papers in the district where she belongs the license shall be surrendered. If the master shall fail to deliver the license he shall be liable to a penalty of \$10. Such penalty on application may be mitigated or remitted by the Commissioner of Customs. R.S. § 4325; Apr. 24, 1906, c. 1865, § 2, 34 Stat. 136; May 31, 1939, c. 160, 53 Stat. 795; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Derivation. Act Feb. 18, 1793, c. 8, § 9, 1 Stat. 308.

Codification. R.S. § 4325, as originally enacted, read as follows: "The license granted to any vessel shall be given up to the collector of the district who may have granted the same, within three days after the expiration of the time for which it was granted, in case such vessel be then within the district, or if she be absent at that time, within three days from her first arrival within the district afterward, or if she be sold out of the district, within three days after the arrival of the master within any district, to the collector of such district, taking his certificate therefor; and if the master thereof shall neglect or refuse to deliver up the license, he shall be liable to a penalty of fifty dollars."

It was amended by Act Apr. 24, 1906 to read as follows: "The license granted to any vessel shall be presented for renewal by endorsement to the collector of customs of the district in which the vessel then may be within three days after the expiration of the time for which it was granted, or, if she be absent at that time, within three days from her first arrival within a district. In case of change of build, ownership, district, trade, or arrival under temporary papers in the district where she belongs the license shall be surrendered. If the

master shall fail to deliver the license he shall be liable to a penalty of \$10, which shall not be mitigated."

1939 Amendment. Act May 31, 1939 amended section to permit mitigation or remittance of penalty, formerly expressly prohibited.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 28, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Commissioner of Customs, referred to in this section, is an officer of the Treasury Department.

"Commissioner of Customs" was substituted for "Secretary of Commerce" on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Cross References

Canal boats or boats employed on internal waters or canals of any state, exemption from requirements of this section, see section 336 of this title.

§ 268. Exemption from penalty; loss of license

If such license shall have been previously given up to the collector of any other district, as authorized by sections 251-255, 258, 259, 262-280, 293, 306-316, 318, 321-330, and 333-335 of this title, and a certificate thereof under the hand of such collector be produced by such master, or if such license be lost, or destroyed, or unintentionally mislaid so that it can not be found, and the master of such vessel shall make and subscribe an oath that such license is lost, destroyed, or unintentionally mislaid, as he verily believes, and that the same, if found, shall be delivered up, as is required, then the penalty prescribed in section 267 of this title shall not be incurred. If such license shall be lost, destroyed, or unintentionally mislaid, before the expiration of the time for which it was granted, upon the like oath being made and subscribed by the master of such vessel, the collector, upon application being made therefor, shall license such vessel anew. R.S. § 4326.

Historical Note

Derivation. Act Feb. 13, 1793, c. 8, § 9, 1 Stat. 308.

Cross References

Canal boats or boats employed on internal waters or canals of any state, exemption from requirements of this section, see section 336 of this title.

§ 269. Return and cancellation; new license

The owner of any licensed vessel may return such license to the collector who granted the same, at any time within the year for which it was granted; and thereupon the collector shall cancel the same, and shall license such vessel anew, upon the application of the owner, and upon the conditions hereinbefore required being complied with. R.S. § 4327.

Historical Note

Derivation. Acts Feb. 13, 1793, c. 8, § 10, 1 Stat. 309; July 13, 1866, c. 201, § 43, 14 Stat. 188.

Cross References

Canal boats or boats employed on internal waters or canals of any state, exemption from requirements of this section, see section 336 of this title.

§ 270. Renewal when vessel is in another district

Whenever it becomes necessary for the owner of any vessel of the United States navigating the waters of the United States, and being in a district other than that to which such vessel belongs, to procure her enrollment and license, or license, or renewal thereof, the same proceedings may be had in the district in which the vessel then is, as are required by law on application for such enrollment and license, or license, or renewal thereof, as the case may be, in the district to which such vessel belongs, excepting the enrollment and issuance of license; and the officer before whom such proceeding is had shall certify the same to the collector of the district to which such vessel belongs, who shall thereupon duly enroll the vessel and issue license in the same form as if the application had originally been made in his office; and shall either deliver the license to the owner, or forward it by mail to the officer who certified to him the preliminary proceedings; and in the latter case, such officer shall deliver the license to the owner or master of the vessel. R.S. § 4328; Apr. 17, 1874, c. 106, 18 Stat. 30.

Historical Note

Derivation. Acts Feb. 28, 1865, c. 69, 13 Stat. 444; Apr. 17, 1874, c. 106, 18 Stat. 30.

Codification. R.S. § 4328 applied only to vessels of the United States navigating the western rivers or the waters on the northern, northeastern and northwestern frontiers of the United States otherwise than by sea. It was extended by Act Apr. 17, 1874 to include all vessels of the United States navigating the waters of the United States.

Prior to incorporation of the section into the Code, the clause now reading "who shall thereupon duly enroll the vessel," etc., read "who shall thereupon, on the owner giving bond as required in other cases, duly enroll the vessel," etc. R.S. § 4145, requiring a bond as a condition precedent to registry, and which was seemingly made applicable to enrollments by section 4312 (section 252 of this title) was repealed by Act Jan. 16, 1895, c. 24, § 1, 28 Stat. 624.

Notes of Decisions

1. Vessels included

In this section and other sections of this chapter Congress includes in the coasting trade vessels bound from a dis-

trict in one state to a district in the same or any other state, whether they navigate rivers or the seacoast proper. *Ravesies v. U. S.*, C.C.Ala.1889, 37 F. 447.

§ 271. Renewal on sale of vessel

Whenever it appears, by satisfactory proof, to the Commissioner of Customs that any vessel has been sold and transferred by process of law, and that the certificate of enrollment or license of such vessel is retained by the former owner, the Commissioner may direct the collector of the district to which such vessel belongs to grant a new certificate of enrollment or license, on the owner's, under such sale, complying with such terms and conditions as are by law required for granting of such papers, excepting only the delivering up of the former certificate of enrollment or license. But nothing in this section shall be construed to remove the liability of any person to any pen-

alty for not surrendering up the papers belonging to any vessel, on a transfer or sale of the same. R.S. § 4329; Feb. 14, 1903, c. 552, § 10, 32 Stat. 829; Mar. 4, 1913, c. 141, § 1, 37 Stat. 736; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Derivation. Act Mar. 2, 1797, c. 7, 1 Stat. 498.

Codification. Upon incorporation into the Code, the words "Secretary of Commerce" were substituted for "Secretary of the Treasury" to conform to Act Feb. 14, 1903, transferring the duties of the Secretary of the Treasury respecting merchant vessels to the Secretary of Commerce and Labor; and Act Mar. 4, 1913, designating the Secretary of Commerce and Labor the Secretary of Commerce.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of

any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 28, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Commissioner of Customs, referred to in this section, is an officer of the Treasury Department.

"Commissioner of Customs" was substituted for "Secretary of Commerce" and "Commissioner" for "Secretary" on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

§ 272. Oath as to payment for repairs

No license, or enrollment and license, nor renewal of either, shall be issued to any vessel until the collector to whom application is made for the same is satisfied, from the oath of the owner or master, that all equipments and repairs, made in a foreign port within the year immediately preceding such application, have been duly accounted for, and the duties accruing thereon duly paid; and if such owner or master shall refuse to take such oath, or take it falsely, the vessel shall be seized and forfeited. R.S. § 4330.

Historical Note

Derivation. Act July 18, 1866, c. 201, § 23, 14 Stat. 184.

Cross References

Duty on equipments and repairs, and remission thereof, see sections 257 and 258 of Title 19, Customs Duties.

§ 273. Measurement of vessels less than twenty tons

Before any vessel, of the burden of five tons, and less than twenty tons, shall be licensed, the same measurement shall be made of such vessel, and the same provisions observed relative thereto, as are to be observed in case of measuring vessels to be registered or enrolled; but in all cases, where such vessel or any other licensed vessel shall have been once measured, it shall not be necessary to measure such

vessel anew, for the purpose of obtaining another enrollment or license, unless such vessel shall have undergone some alteration as to her burden, subsequent to the time of her former license. R.S. § 4331.

Historical Note

Derivation. Acts Feb. 18, 1793, c. 8, § 26, 1 Stat. 315; May 6, 1864, c. 83, § 1, 13 Stat. 69.

Cross References

Canal boats or boats employed on internal waters or canals of any state exemption from requirements of this section, see section 336 of this title.

Provisions relating to measurement of vessels before registration or enrollment thereof, see sections 71 et seq. of this title.

§ 274. Surveyor's return of manifests and permits certified or received

Every surveyor who certifies a manifest, or grants any permit, or who receives any certified manifest, or any permit, as is provided for in sections 251-255, 258, 259, 262-280, 293, 306-316, 318, 321-330, and 333-335 of this title, shall make return thereof monthly, or sooner, if it can conveniently be made, to the collector of the district where such surveyor resides. R.S. § 4332; June 17, 1930, c. 497, Title IV, § 523, 46 Stat. 740.

Historical Note

Derivation. Act Feb. 18, 1793, c. 8, § 26, 1 Stat. 315. Documents by Comptroller of Customs (originally naval officers).

1930 Amendment. Act June 17, 1930 repealed requirement of signing of doc-

Cross References

Canal boats or boats employed on internal waters or canals of any state, exemption from requirements of this section, see section 336 of this title.

Office of surveyor of customs abolished except in Port of New York, see section 5a of Title 19, Customs Duties.

Notes of Decisions

I. Signatures to enrollment or license

The genuineness of the authentication of a copy of a certificate of enrollment offered in evidence to establish the national character of a vessel on a prosecution for a crime committed on ship-board was assumed, as was also the official character of the purported signer

and the signing by him, or one authorized to sign for him, where there was no evidence casting suspicion upon the genuineness of the copy or of the seal, or the signature, and none which challenged in any way the American character of the ship. *Wynne v. U. S.*, Hawaii 1909, 30 S. Ct. 447, 217 U.S. 234, 54 L.Ed. 748.

§ 275. Record of licenses

The collector of each district shall progressively number the licenses by him granted, beginning anew at the commencement of each year, and shall make a record thereof in a book, to be by him kept for

that purpose, and shall, once in three months, transmit to the Commissioner of Customs copies of the licenses which shall have been so granted by him; and also of such licenses as shall have been given up or returned to him, respectively, in pursuance of sections 251-255, 258, 259, 262-280, 293, 306-316, 318, 321-330, and 333-335 of this title. Whenever any vessel is licensed or enrolled anew, or being licensed or enrolled is afterward registered, or being registered is afterward enrolled or licensed, she shall, in every such case, be enrolled, licensed, or registered by her former name. R.S. § 4333; July 5, 1884, c. 221, § 2, 23 Stat. 119; June 30, 1932, c. 314, § 501, 47 Stat. 415; May 27, 1936, c. 463, § 1, 49 Stat. 1380; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Derivation. Act Feb. 18, 1793, c. 8, § 7, 1 Stat. 308.

Codification. Upon incorporation into the Code, the words "Commissioner of Navigation" were substituted for "Register of the Treasury" to conform to Act July 5, 1884.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note

under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Commissioner of Customs, referred to in this section, is an officer of the Treasury Department.

Words "Commissioner of Navigation" were changed to "Director, Bureau of Navigation and Steamboat Inspection", then to "Director of the Bureau of Marine Inspection and Navigation" and finally to "Commissioner of Customs" on authority of Acts June 30, 1932 and May 27, 1936, and 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Cross References

Canal boats or boats employed on internal waters or canals of any state, exemption from requirements of this section, see section 336 of this title.

Notes of Decisions

1. Effective date of license

The effective date of license of vessel is the date of application for license,

and not the date of the clerical act of issuing the license. The Enos, D.C. Wash.1933, 24 F.Supp. 387.

§ 276. Change of master

(a) Whenever the master of any licensed vessel, ferryboats excepted, is changed, the new master, or, in case of his absence, the owner or one of the owners thereof, shall report such change to the collector residing at the port where the same happens, if there be one; otherwise, to the collector residing at any port where such vessel next arrives, who, upon the oath of such new master, or, in case of his absence, of the owner, that such master is a citizen of the United States, and that such vessel shall not, while such license continues in force, be employed in any manner whereby the revenue of the

United States may be defrauded, shall endorse such change on the license, with the name of the new master. Whenever such change is not reported, and endorsed, as herein required, such vessel, if found carrying on the coasting trade or fisheries, shall be subject to pay the same fees and tonnage as a vessel of the United States having a register, and the new master shall be liable to a penalty of \$10: *Provided*, That the Commissioner of Customs may authorize the endorsement of not more than two alternate masters in addition to the one already endorsed on the license, whenever in his judgment the condition of employment of the vessel warrants such action: *Provided further*, That in the case of vessels navigated within the limits of the harbor of any town or city, the name of the owner or some responsible person acting for the owner who otherwise meets all requirements of the laws of the United States with regard to masters, may be endorsed on the license of such vessel, although not actually employed thereon, in accordance with rules and regulations prescribed by the Commissioner of Customs: *And provided further*, That in the case of unrigged vessels which are not required by law to have on board a certificate of inspection, the name of the owner or any responsible person acting for the owner who otherwise meets all requirements of the laws of the United States with regard to masters, may be endorsed on the license of such unrigged vessel although not actually employed on board the vessel; *And provided further*, That in the case of any vessel engaged in towing from any port or place embraced within the coastwise laws of the United States to any other such port or place plying in whole or in part on inland rivers, canals, waterways, sounds, gulfs, lakes, and harbors, not carrying passengers nor proceeding directly or indirectly to any foreign port or place or to any port or place in noncontiguous territory of the United States, the name of the owner or some responsible person acting for the owner who otherwise meets all requirements of the laws of the United States with regard to master, may be endorsed on the license of such vessel, although not actually employed thereon, in accordance with rules and regulations prescribed by the Secretary of the Treasury.

(b) In the case of those vessels on the licenses of which there are endorsed the names of more than one master, the master actually in charge of the vessel shall assume all of the duties and responsibilities imposed by any statute upon masters of vessels, and incur the liabilities provided by any law against masters of vessels during any period in which he is in charge of the vessel.

(c) The term "unrigged vessel" as used in this section, means any vessel that is not self-propelled. R.S. § 4335; May 31, 1939, c. 159, § 53 Stat. 794; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097; Aug. 30, 1957, Pub.L. 85-237, § 1, 71 Stat. 517.

Historical Note

Derivation. Act Feb. 18, 1793, c. 8, § 12, 1 Stat. 309.

1957 Amendment. Subsec. (a) amended by Pub.L. 85-237, which added proviso relating to endorsements on licenses in case of vessels engaged in coast-wise towing, provided they are not carrying passengers or proceeding to a foreign country or noncontiguous territory.

1939 Amendment. Act May 31, 1939 amended section by designating existing provisions as subsec. (a), adding thereto provisos relating to endorsements on licenses generally and in case of vessels navigated within limits of any town or city and unrigged vessels, and by adding subssecs. (b) and (c).

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize

their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Commissioner of Customs, referred to in this section, is an officer of the Treasury Department.

"Commissioner of Customs" was substituted for "Secretary of Commerce" on authority of 1948 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Legislative History: For legislative history and purpose of Act Aug. 30, 1957, see 1957 U.S.Code Cong. and Adm.News, p. —.

Cross References

Canal boats or boats employed on internal waters or canals of any state, exemption from requirements of this section, see section 336 of this title.

§ 277. Inspection of documents

Any officer concerned in the collection of the revenue may at all times inspect the register or enrollment or license of any vessel or any document in lieu thereof; and if the master or other person in charge or command of any such vessel shall not exhibit the same, when required by such officer, unless the vessel is one which by regulation of the Secretary of the Treasury is not required to have its register or enrollment or license or document in lieu thereof on board, such master or person in charge or command shall be liable to a penalty of \$100, unless the failure to do so is willful, in which case he shall be liable to a penalty of \$1,000 and to a fine of not more than \$1,000 or imprisonment for not more than one year, or both. R.S. § 4336; Aug. 5, 1935, c. 438, Title III, § 312, 49 Stat. 528; Aug. 30, 1957, Pub.L. 85-237, § 2, 71 Stat. 518.

Historical Note

Derivation. Act Feb. 18, 1793, c. 8, § 13, 1 Stat. 309.

1957 Amendment. Pub.L. 85-237 amended section by providing for penalties against other officer in charge or command of vessel and by excepting vessels which are not required by regula-

tion of the Secretary of Treasury to exhibit their documents on board.

1935 Amendment. Act Aug. 5, 1935 amended section by providing for inspection of the register or any document and punishment for willful failure to exhibit document.

Cross References

Canal boats or boats employed on internal waters or canals of any state, exemption from requirements of this section, see section 336 of this title.

Notes of Decisions

Canal boats 1
Search 2

rolled or licensed. *The John J. Wiltsie*, D.C.N.Y.1869, Fed.Cas.No.7,353.

2. Search

1. Canal boats

The penalty for failure to exhibit an enrollment or license when demanded under this section, is not enforceable against a canal boat which was not en-

rolled or licensed. Power of officers to board and inspect ship's license involved power to go so far in searching her as to ascertain whether she was engaged in fishing in accordance with license. *U. S. v. Wischerth*, C.C.A.N.Y.1933, 68 F.2d 161.

§ 278. Penalty for unlawfully proceeding on foreign voyage

If any vessel, enrolled or licensed, shall proceed on a foreign voyage, without first giving up her enrollment and license to the collector of the district comprehending the port from which she is about to proceed on such voyage, and being duly registered by such collector, every such vessel, together with her tackle, apparel, and furniture, and the merchandise so imported therein, shall be liable to seizure and forfeiture. R.S. § 4337.

Historical Note

Derivation. Act Feb. 13, 1793, c. 8, § 8, 1 Stat. 308.

Cross References

Canal boats or boats employed on internal waters or canals of any state, exemption from requirements of this section, see section 336 of this title.
Pleasure yachts; license; entry and clearance; restrictions, see section 103 of this title.

Notes of Decisions

Attachment of penalty 6
Evidence 5
Foreign voyages 1
Pleading 4
Release on bond 3
Review 3
Sale under condemnation 7
Seizures 2

A "foreign port" within this section providing for vessel's giving up of enrollment and license before proceeding on "foreign voyage" is not any place on high seas outside territorial limits of United States, but port or place exclusively within sovereignty of foreign nation, and voyage to such port or place is "foreign voyage." *Id.*

1. Foreign voyages

So long as vessel is passing from one port of United States to another, she may keep as far from shore as she pleases without incurring penalty for proceeding on "foreign voyage" without first giving up her enrollment and license. *The Winnie*, C.C.A.Pa.1933, 65 F.2d 706.

By proceeding to high seas outside territorial limits of United States and making contact there with vessel of foreign registry, gas screw boat did not make "foreign voyage" so as to be subject to forfeiture for not first giving up her enrollment and license. *Id.*

Not all places on the high seas are foreign to the United States, within this section, nor is any point outside terri-

torial limits of United States a foreign point. *The Esther M. Rendle*, C.C.A.Mass. 1925, 7 F.2d 545.

Tug enrolled and licensed for coasting trade had not "proceeded on foreign voyage," subjecting her to forfeiture under this section, by towing lighter from port to vessel hovering at sea, from which lighter was laden with liquor, and then towing her to port. *Id.*

Where a vessel licensed for coastwise trade, victualled a British ship on the high sea hovering off the port of New York, she was proceeding on a "foreign voyage," in violation of this section, as such a voyage is not necessarily to a foreign port and all places on the high seas are foreign to the United States, though not within the dominion of any other power. *The Alex Clark*, D.C.N.Y. 1923, 294 F. 904.

A vessel enrolled and licensed for the fisheries is not to be deemed to be engaged on a foreign voyage by touching at a foreign port in the course of the voyage for supplies, or repairs, or for any other purpose than trade. *The Ocean Spray*, C.C.Ill.1876, 4 Sawy. 105, 18 Fed. Cas.No.10,412.

It is not a foreign voyage if the delivery of the cargo is made within United States waters, though to a British subject residing on the British side of the stream. *The Atlantic*, D.C.Me.1827, Fed.Cas.No.621.

A "foreign port or place" is a port or place within the sovereignty of a foreign nation. *The Eliza*, C.C.Mass.1813, Fed. Cas.No.4,346.

A voyage to a foreign port within the usual voyage of vessels licensed for the fisheries is not a "foreign voyage." *The Three Brothers*, C.C.Mass.1812, Fed.Cas. No.14,009.

"Foreign voyage" means a voyage to some place in the jurisdiction of a foreign country, or at least without the waters of the United States. *The Lark*, C.C.Mass.1812, Fed.Cas.No.8,090.

2. Seizures

Liability of vessel for unlawfully proceeding on foreign voyage and engaging in trade without license is within law authorizing seizure by customs officers. *Maul v. U. S.*, Conn.1927, 47 S.Ct. 735, 274 U.S. 501, 71 L.Ed. 1171.

Intoxicating liquor seized on board schooner on high seas at some distance from any port was not imported, since mere fact that cargo was on board schooner was not of itself sufficient to

warrant forfeiture. *U. S. v. 1,197 Sacks of Intoxicating Liquor*, D.C.Conn.1930, 38 F.2d 822.

Coastwise vessel, forfeited for proceeding on foreign voyage without giving up enrollment, was forfeited for customs violation, and might be used by government. *The Alert*, D.C.N.Y.1927, 24 F.2d 239.

An enrolled vessel is liable to seizure and forfeiture for proceeding on a foreign voyage without registry or for obtaining or using registry, enrollment or license knowingly and fraudulently. *Braga v. Braga*, 1943, 51 N.E.2d 429, 314 Mass. 666.

3. Release on bond

Vessel seized under this section for violation of internal revenue law may be released on bond. *The Lynx II*, D.C.N.Y.1926, 14 F.2d 697.

Former section 751 of Title 28 (see section 1605 et seq. of Title 19) and Admiralty Rule 12, 28 U.S.C.A., relating to bonding of vessel are mandatory and require release on bond of vessel seized under this section irrespective of prior seizures. *The California*, D.C.N.Y.1926, 12 F.2d 270.

Under section 2464 of Title 28, vessel seized by the United States for forfeiture under this section for transporting intoxicating liquors on high seas in violation of her license, was not subject to release to claimant on bond. *The Lorraine Rita*, D.C.Pa.1925, 6 F.2d 175.

4. Pleading

Jurisdiction of court in libel against vessel under this section so far as seizure is concerned, is acquired when seizure is made by proper party, and jurisdiction is not subsequently surrendered because of mere failure to allege seizure in the libel itself. *The Rosemary*, D.C. N.J.1927, 23 F.2d 103.

Failure to allege in libel that yacht was formally seized was not fatal, where evidence showed seizure by proper authority. *Id.*

Libel for forfeiture of liquor-laden coastwise vessel for proceeding on foreign voyage without giving up enrollment or license was sufficient. *The Underwriter*, C.C.A.Conn.1926, 13 F.2d 433, affirmed 47 S.Ct. 735, 274 U.S. 501, 71 L. Ed. 1171.

In libel of information to forfeit steam tug, under this section, general allegation that tug towed lighter laden with liquor into United States port, and that unloading of liquor and transportation

of alcohol into United States was in violation of customs law, was sufficient, within rules of admiralty pleading. *The Esther M. Rendle*, C.C.A.Mass.1925, 7 F. 2d 545.

5. Evidence

Burden of proving with reasonable certainty that liquor-laden vessel flying foreign flag seized by Coast Guard 35 miles from American coast was American vessel, so as to subject her to forfeiture under this section, was on government to prove. *The Chiquita*, C.C.A.La.1927, 19 F.2d 417.

Evidence did not sustain burden on government, seeking forfeiture of liquor-laden vessel, of proving that it was American vessel. *Id.*

6. Attachment of penalty

Licensed fishing vessel seized within United States waters while on voyage to Nova Scotia to be delivered to purchaser was not subject to forfeiture, as proceeding on foreign voyage without first surrendering enrollment and license at port of departure; the undisputed facts showing that vessel was to have been equipped with electric light plant at

domestic port and that foreign part of voyage was not to commence until she left that port. *The Pilot*, D.C.Me.1929, 36 F.2d 250.

The forfeiture of a coasting vessel for proceeding on a foreign voyage does not attach until the vessel quits the port with intent to proceed on the foreign voyage. *The Friendship*, C.C.Mass.1812, Fed.Cas.No.5,124. See, also, *The Julia*, C.C.Mass. 1812, Fed.Cas.No.7,573.

7. Sale under condemnation

A vessel condemned for violation of the law, and sold under order of the court, may become foreign property. *U. S. v. The Hawke*, D.C.S.C.1794, Fed.Cas. No.15,331.

8. Review

In libel by United States, under this section, decree, including costs "to be taxed," which put an end to litigation, was final, so as to require application for appeal within three months, under former section 230, now 2107, of Title 28, since clerk, by taxing costs, had no power to make or amend decree. *The Albattross*, C.C.A.N.J.1927, 19 F.2d 141.

§ 279. Certificate for vessel proceeding on foreign voyage

If the port from which any vessel, so enrolled or licensed, is about to proceed on a foreign voyage, is not within the district where such vessel is enrolled, the collector of such district shall give to the master of such vessel a certificate, specifying that the enrollment and license of such vessel has been received by him, and the time when it was so received; which certificate shall afterward be delivered by the master to the collector who may have granted such enrollment and license. R.S. § 4338.

Historical Note

Derivation. Act Feb. 18, 1793, c. 8, § 8, 1 Stat. 308.

Cross References

Canal boats or boats employed on internal waters or canals of any state, exemption from requirements of this section, see section 336 of this title.

§ 280. Papers for vessels in whale fishery

All vessels which may clear with registers for the purpose of engaging in the whale fishery shall be deemed to have lawful and sufficient papers for such voyages, securing the privileges and rights of registered vessels, and the privileges and exemptions of vessels enrolled and licensed for the fisheries. R.S. § 4339.

Historical Note

Derivation. Act Apr. 4, 1840, c. 6, § 1, 5 Stat. 370.

Notes of Decisions**Prior law 1****Rights and privileges 3****Uncensored registered vessels 2****1. Prior law**

In the Act of 1840, 5 Stat. 370, c. 6, from which this section was derived, the Congress did not provide that vessels with registers may clear for the whale fishery, but that vessels which cleared or may clear with a register for the purpose of engaging in the whale fishery shall be deemed to have lawful and sufficient papers for such voyage; and the Congress further secured to such vessels the privileges and rights of registered vessels and the privileges and exemptions of vessels enrolled and licensed for the fisheries, and thereby endowed them, in accordance with the respective Acts 1792, 1 Stat. 287, and 1793, 1 Stat. 305, with the status of vessels of the United States entitled to the benefits and priv-

ileges appertaining thereto for the purpose of engaging in the whale fishery, but not for the purpose of engaging in the foreign or coasting trade. *U. S. v. Western Operating Corp.*, 1948, 35 C.C.P.A., Customs, 71.

2. Uncensored registered vessels

Registered vessels, not licensed, may be legally employed on a whaling voyage, and may come into American ports without being subject to the disabilities of foreign vessels. *U. S. v. Jenkins*, C.C.N.Y. 1838, Fed. Cas. No. 15,473.

3. Rights and privileges

Though this section made a register a lawful documentation for a vessel engaged in whale industry, such documentation does not ipso facto establish vessel's right to engage in foreign trade, but establishes right only to engage in whale fishery. *U. S. v. Western Operating Corp.*, 1948, 35 C.C.P.A., Customs, 71.

§§ 281-287. Repealed. Feb. 28, 1933, c. 131, § 1, 47 Stat. 1349.

Historical Note

Sections 281-286, R.S. §§ 4340-4345, related to enrollment and licensing by assistant and deputy collectors at specified ports and by surveyors at ports of delivery and other ports specified.

Section 287, R.S. § 4334, required licensed vessels to have name and port painted on stern, and is now covered by section 46 of this title.

§ 288. Numbering undocumented vessels

Every undocumented vessel, operated in whole or in part by machinery, owned in the United States and found on the navigable waters thereof, except public vessels, and vessels not exceeding sixteen feet in length measured from end to end over the deck excluding sheer, temporarily equipped with detachable motors, shall be numbered. Such numbers shall be not less in size than three inches and painted or attached to each bow of the vessel in such manner and color as to be distinctly visible and legible.

The said numbers, on application of the owner or master, shall be awarded by the Coast Guard official of the district in which the vessel is owned and a record thereof kept in the district in which the

owner or managing owner resides. No numbers not so awarded shall be carried on the bows of such vessel.

Notice of destruction or abandonment of such vessels or change in their ownership shall be furnished within ten days by the owners to the Coast Guard officials of the districts where such numbers were awarded. Such vessel sold into another customs district may be numbered anew in the latter district.

The penalty for violation of any provision of this section shall be \$10, for which the vessel shall be liable and may be seized and proceeded against in the district court of the United States in any district in which such vessel may be found. Such penalty on application may be mitigated or remitted by the Commandant of the Coast Guard.

The Commandant of the Coast Guard shall make such regulations as may be necessary to secure proper execution of this section by Coast Guard officials and other officers of the Government.

When a number is awarded to a vessel under the provisions of this section, a certificate of such award shall be issued by the Coast Guard, the said certificate to be at all times kept on board of such vessel and to constitute a document in lieu of enrollment or license. June 7, 1918, c. 93, §§ 1-5, 40 Stat. 602; Aug. 5, 1935, c. 438, Title II, § 210, 49 Stat. 526; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Codification. Section 6 of Act June 7, 1918 provided that this section should take effect six months after its passage.

1935 Amendment. Act Aug. 5, 1935 amended section to provide for issuance by Coast Guard of certificate of award of number to vessel.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a

service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

"Coast Guard official" was substituted for "collector of customs", "Commandant of the Coast Guard" was substituted for "Secretary of Commerce", "the custom-house of" following "kept in" in second paragraph was omitted, and "Coast Guard" was substituted for "collector" in last paragraph, on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Cross References

Vessels exempt from keeping on board number certificate, see section 526t of this title.

Notes of Decisions

Forfeiture for misuse 2

Fraudulent registry of vessel 1

1. Fraudulent registry of vessel

Section 60 of this title providing penalty for fraudulent registry of vessel is applicable to vessels numbered under this section. *The Nana*, D.C.Tex.1936, 14 F.Supp. 806.

2. Forfeiture for misuse

A vessel over five tons burden bearing only numbers issued under this section and employed in trade is subject to forfeiture. *Stephens v. U. S.*, C.C.A.Ala.1929, 30 F.2d 236. See, also, *Ford v. Kline*, D. C.Fla.1930, 42 F.2d 558.

§ 289. Transportation of passengers in foreign vessels

No foreign vessel shall transport passengers between ports or places in the United States, either directly or by way of a foreign port, under a penalty of \$200 for each passenger so transported and landed. June 19, 1886, c. 421, § 8, 24 Stat. 81; Feb. 17, 1898, c. 26, § 2, 30 Stat. 248.

Historical Note

Codification. Act Feb. 17, 1898 increased from \$2 to \$200 the penalty for transporting passengers in foreign vessels.

Transportation of Passengers and Merchandise on Canadian Vessels Between Points in Alaska and United States. Pub.L. 85-103, July 11, 1957, 71 Stat. 294, provided: "That, until June 30, 1958, notwithstanding the provisions of law of the United States restricting to vessels of the United States the transportation of passengers and merchandise directly or indirectly from any port in the United States to another port of the United States, passengers may be transported on Canadian vessels between ports in southeastern Alaska, and passengers and merchandise may be transported on Canadian vessels between Hyder, Alaska, and other points in southeastern Alaska or the continental United States, either directly or via a foreign port, or for any part of the transportation."

Similar provisions were contained in the following Acts:

1956—Apr. 18, 1956, c. 207, 70 Stat. 114.
1955—May 7, 1955, c. 35, 69 Stat. 47.
1954—June 29, 1954, c. 413, 68 Stat. 321.
1953—July 16, 1953, c. 201, 67 Stat. 175.
1952—June 11, 1952, c. 391, 66 Stat. 183.
1951—June 27, 1951, c. 153, 65 Stat. 90.
1950—June 29, 1950, c. 409, 64 Stat. 301.
1949—Aug. 22, 1949, c. 493, 63 Stat. 622.

Transportation of Passengers in Foreign Vessels Between Points in Hawaii and Pacific Coast. Act June 5, 1920, c. 250, § 22, 41 Stat. 997 authorized the United States Shipping Board, if deemed necessary, to issue permits for the carrying of passengers in foreign ships operating between the Territory of Hawaii and the Pacific Coast until Feb. 1, 1922.

Legislative History: For legislative history and purpose of Act July 11, 1957, see 1957 U.S.Code Cong. and Adm.News, p. —.

Cross References

Remission or mitigation of fines, see section 320 of this title.

Transportation of merchandise between points in United States in other than domestic-built and documented vessels, see section 883 of this title.

Notes of Decisions

Generally 3
Cruises 6
Foreign ports 5
Port or place in United States
Prior law 1
Purpose 2

1. Prior law

Foreign vessels, except steamboats employed on rivers or bays, etc., could carry passengers from port to port in the United States, subject to the conditions as to fees, tonnage duties, etc., prescribed by Act Feb. 18, 1793, c. 8 (incorporated in part in this chapter). 1843, 4 Op. Atty. Gen. 270.

2. Purpose

This section is designed to exclude ships of foreign registry from carrying on coastwise or other domestic traffic by direct or indirect carriage of passengers from one United States port to another. The *Granada*, D.C. Pa. 1940, 35 F. Supp. 892.

3. Generally

The inquiry under this section is one between the United States and the vessel and involves the following questions:—Was the vessel a foreign one? Did she take the passengers on board at a port of the United States and after a substantially continuous voyage land them at another port of the United States? When the conjunction of facts exists, the vessel is subjected to liability for the fine. 1930, 36 Op. Atty. Gen. 352.

4. Port or place in United States

Honolulu is a port or place in the United States by virtue of sections 495 and 496 of Title 48. 1930, 36 Op. Atty. Gen. 352.

5. Foreign ports

The transportation of passengers by a foreign vessel from Philadelphia to Boston where they were landed for the purpose of attending a convention of a

fraternal organization and return of these passengers to Philadelphia by way of St. Johns, Newfoundland, and Halifax, Nova Scotia, with stopover privileges was a violation of this section. 1924, 34 Op. Atty. Gen. 340.

The transportation of passengers by foreign vessels from San Juan, Porto Rico, to the port of New York, notwithstanding the fact that the passengers went ashore for brief stays at intervening foreign ports, was a violation of this section. 1913, 30 Op. Atty. Gen. 44.

The transportation of passengers by foreign vessels from a port in the United States through domestic and foreign waters, sometimes touching at a foreign port, and returning them to the port of departure, was not in violation of this section. 1912, 29 Op. Atty. Gen. 318.

A foreign vessel is liable to a fine for every passenger transported by it from one port in the United States to another port in the United States, though the continuity of the voyage may have been broken by the vessel touching at an intermediate foreign port. 1886, 18 Op. Atty. Gen. 445.

6. Cruises

Where Honduran vessel, which had as its principal business importation of bananas from tropics, but which also as incident to main business carried a limited number of tropical cruise passengers, sailed from New York to Mexico where a cargo was taken on and ship proceeded homeward, but to get bananas into a port for sale while in a saleable condition, vessel put into port at Philadelphia and cargo and passengers were discharged there, railroad fare to New York being given passengers, owner of vessel was not subject to fine for violation of this section. The *Granada*, D.C. Pa. 1940, 35 F. Supp. 892.

Tourists taken on board the German steamship *Cleveland* at New York, carried around the world, and landed at San Francisco, were not transported and landed in violation of this section. 1910, 28 Op. Atty. Gen. 204.

§ 289a. Same; exception to section 289; Canadian vessels

Until such time as passenger service shall be established by vessels of the United States between the port of Rochester, New York, and the port of Alexandria Bay, New York, the Commissioner of Customs is authorized in his discretion to issue annually permits to

Canadian passenger vessels to transport passengers between these ports; such Canadian vessels holding such permits not to be subject to the provisions of section 289 of this title. Apr. 26, 1938, c. 174, 52 Stat. 223; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Offi-

cers and Employees. The Commissioner of Customs, referred to in this section, is an officer of the Treasury Department.

"Commissioner of Customs" was substituted for "Secretary of Commerce" on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

§ 290. Transportation of merchandise in foreign vessels

Historical Note

Section, Act Feb. 17, 1898, c. 26, § 1, 30 Stat. 248, is now covered by section 883 of this title.

§ 291. Transshipment of imported merchandise intended for immediate exportation

Whenever merchandise is imported into the United States by sea for immediate exportation to a foreign port by sea, or by a river, the right to ascend or descend which for the purposes of commerce is secured by treaty to the citizens of the United States and the subjects of a foreign power, the Secretary of the Treasury is authorized to prescribe regulations for the transshipment and transportation of such merchandise. Feb. 17, 1898, c. 26, § 3, 30 Stat. 248.

§ 292. Dredging by foreign-built dredges

A foreign-built dredge shall not, under penalty of forfeiture, engage in dredging in the United States unless documented as a vessel of the United States. May 28, 1906, c. 2566, § 1, 34 Stat. 204.

Historical Note

Codification. Section 2 of Act May 28, 1906 provided for documenting as vessels of the United States, certain named foreign-built dredges. It was omitted from the Code, as special only.

§ 293. Establishment of great districts

The seacoasts and navigable rivers of the United States and Puerto Rico shall be divided into five great districts: The first to include all the collection districts on the seacoasts and navigable rivers between the northern boundary of the State of Maine and the southern boundary of the State of Texas; the second to consist of the island of Puerto Rico; the third to include the collection districts on the seacoasts and navigable rivers between the southern boundary of the State of California and the northern boundary of the State of Washington; the fourth to consist of the Territory of Alaska; the fifth to consist of the Territory of Hawaii. R.S. § 4348; May 12, 1906, c. 2453, § 1, 34 Stat. 190; May 17, 1932, c. 190, 47 Stat. 158.

Historical Note

Derivation. Acts Mar. 2, 1819, c. 48, § 1, 3 Stat. 482; May 7, 1822, c. 62, § 11, 3 Stat. 685.

Codification. R.S. § 4348, as originally enacted, was as follows: "The seacoast and navigable rivers of the United States shall be divided into three great districts: The first to include all the collection-districts on the sea-coast and navigable rivers, between the eastern limits of the United States and the southern limits of Georgia; the second to include all the collection-districts on the sea-coast and navigable rivers be-

tween the river Perdido and the Rio Grande; and the third to include all the collection-districts on the sea-coast and navigable rivers between the southern limits of Georgia and the river Perdido."

Section 2 of Act May 12, 1906, provided that such Act should take effect on and after Jan. 1, 1907.

Change of Name. The name of "Porto Rico" was changed to "Puerto Rico" by Act May 17, 1932.

§ 293a. Additional great district

There is created, in addition to the five great districts provided by section 293 of this title, a sixth great district to include all the collection districts on the Great Lakes, their connecting and tributary waters, as far east as the Raquette River, New York. July 3, 1926, c. 757, § 1, 44 Stat. 832.

Historical Note

Seamen's Rights and Privileges Unaffected. Section 2 of Act July 3, 1926, provided that nothing in this section

should affect the rights or privileges reserved to seamen under law existing on July 3, 1926.

§ 293b. Vessels operating in Great Lakes district; laws applicable

Historical Note

Codification. Section, Act July 3, 1926, c. 757, § 2, 44 Stat. 832, provided that vessels operating in the district created by section 293a of this title should be

subject to the requirements of sections 294-297 of this title. Said sections 294-297 have now been repealed.

§§ 294—305. Repealed. June 8, 1940, c. 284, 54 Stat. 254.

Historical Note

Sections, R.S. §§ 4349-4353, 4357, 4359, 4360 (as amended Feb. 18, 1875, c. 80, § 1, 18 Stat. 320), and Act July 12, 1876, c. 185, 19 Stat. 90, related to manifests

and permits in the case of vessels licensed for carrying on the coasting trade, and trading between different districts.

Notes of Decisions

Forfeiture 3

Manifests 2

Vessels to which applicable 1

1. Vessels to which applicable

The Act of Feb. 18, 1793, was by the Act of March 2, 1831 (similar to section 258 of this title) in effect extended to the foreign and coasting trade on the northern, northeastern, and northwestern frontiers of the United States, and vessels enrolled and licensed and navigating under that Act came within the provisions of sections 15 and 18 of the Act of 1793 (former sections 296, 297, 303 and 304 of this title). *U. S. v. Sweeney*, D.C.Wis.1859, 1 Biss. 309, 28 Fed.Cas.No.18,428.

2. Manifests

Former section 298 of this title prescribed the manner in which foreign

merchandise should be specified in the manifest of a vessel going coastwise, and imposed a pecuniary penalty on the master on failing to comply with it, but did not forfeit the goods. *U. S. v. Carr*, Fla.1850, 49 U.S. 18, 8 How. 18, 12 L.Ed. 963.

3. Forfeiture

The forfeiture applied to cases where foreign merchandise was not included at all in the manifest, and not to cases where it was included in fact, but not with legal precision, and where there was no bad faith. *U. S. v. Carr*, Fla. 1850, 49 U.S. 1, 8 How. 1, 12 L.Ed. 963.

Coasting vessel was not forfeitable for carrying foreign goods without manifest. *The America*, C.C.Mass.1812, Fed. Cas.No.287.

§ 306. Trade between Alaska and other districts

The coasting trade between the Territory of Alaska and any other portion of the United States shall be regulated in accordance with the provisions of law applicable to such trade between any two great districts. R.S. § 4358; Aug. 24, 1912, c. 387, § 1, 37 Stat. 512.

Historical Note

Derivation. Act July 27, 1868, c. 273, § 5, 15 Stat. 241.

Codification. Upon incorporation into the Code, the words "Territory of Alaska" were substituted for "territory ced-

ed to the United States by the Emperor of Russia" to conform to Act Aug. 24, 1912. See section 21 of Title 43, Territories and Insular Possessions.

Cross References

Great district, establishment, see section 293 of this title.

Notes of Decisions

1. Definition

The words "coasting trade" and "coastwise trade," as used in the dif-

ferent acts of Congress, are used synonymously. *Ravensley v. U. S.*, C.C.Ala.1889, 37 F. 447.

§ 307. Regulations as to registered vessels in interdistrict trade

Whenever any vessel of the United States, registered according to law, is employed in going from any one district in the United States to any other district, such vessel, and the master thereof, with the goods she may have on board previous to her departure from the district where she may be, and also upon her arrival in any other district, shall be subject, except as to the payment of fees, to the same regulations, provisions, penalties, and forfeitures, and the like duties are imposed on like officers, as are provided for vessels licensed for carrying on the coasting trade. Nothing herein contained shall be construed to extend to registered vessels of the United States having on board merchandise of foreign growth or manufacture, brought into the United States, in such vessel, from a foreign port, and on which the duties have not been paid according to law. R.S. § 4361.

Historical Note

Derivation. Act Feb. 18, 1793, c. 8, § 20, 1 Stat. 313.

Cross References

Canal boats or boats employed on internal waters or canals of any state, exemption from requirements of this section, see section 336 of this title.

Notes of Decisions

1. Hospital money

The owners of registered vessels engaged in the coasting trade were subject to the payment of hospital money

by Act Mar. 1, 1843, c. 49, and collectors were required to collect it from the seamen, masters, and owners. 1843, 4 Op. Atty.Gen. 233.

§ 308. Permit for inland transportation

The collector of the district of Philadelphia may grant permits for the transportation of merchandise of foreign growth or manufacture across the State of New Jersey to the district of New York, or across the State of Delaware to any district in the State of Maryland or Virginia; and the collector of the district of New York may grant like permits for transportation across the State of New Jersey; and the collector of any district of Maryland or Virginia may grant like permits for transportation across the State of Delaware to the district of Philadelphia. Every such permit shall express the name of the owner, or person sending the merchandise, and of the person to whom the merchandise is consigned, with the marks, numbers, and description of the packages, whether bale, box, chest, or otherwise, and the kind of goods contained therein, and the date when granted; and the owner, or person sending such goods, shall swear that they were legally imported, and the duties paid. Where the merchandise, to be so transported, shall be of less value than \$800, the permit shall not be deemed necessary. R.S. § 4362.

Historical Note

Derivation. Act Feb. 18, 1793, c. 8, § 19, 1 Stat. 313.

Cross References

Canal boats or boats employed on internal waters or canals of any state, exemption from requirements of this section, see section 336 of this title.

Merchandise may be entered for transportation in bond without appraisement to any other port of entry, see section 1552 of Title 19, Customs Duties.

Notes of Decisions**1. Forfeiture**

Foreign goods exceeding \$800 in value, transported across a state without permit were liable to forfeiture notwithstanding they were not the property of

master, owner, or any mariner of vessel in which imported, and notwithstanding duty was paid at port of entry. *Priestman v. U. S.*, Pa.1800, 4 U.S. 28, 4 Dall. 28, 1 L.Ed. 727.

§ 309. Penalty for failure to report arrival of merchandise transported inland

The owner or consignee of all merchandise transported under the provisions of section 308 of this title and for the transportation whereof a permit is necessary, shall, within twenty-four hours after the arrival thereof at the place to which such merchandise was permitted to be transported, report the same to the collector of the district where it has arrived, and shall deliver up the permit accompanying the same; and if the owner or consignee shall neglect or refuse to make due entry of such merchandise within the time and in the manner directed, all such merchandise shall be subject to forfeiture; and if the permit granted shall not be given up within the time limited for making the report, the person to whom it was granted, neglecting or refusing to deliver it up, shall be liable to a penalty of \$50 for every twenty-four hours it shall be withheld afterward. R.S. § 4863.

Historical Note

Derivation. Act Feb. 18, 1793, c. 8, § 19, 1 Stat. 313.

Cross References

Merchandise may be entered for transportation in bond without appraisement to any other port of entry, see section 1552 of Title 19, Customs Duties.

Notes of Decisions**1. Ownership of property**

Foreign goods transported across a state without a permit in violation of law were liable to forfeiture, though not the property of the master or owner

of the vessel in which they were imported, and although the duties were paid at the port of entry. *Priestman v. U. S.*, Pa.1800, 4 U.S. 30, 4 Dall. 30, 1 L.Ed. 727.

§ 310. Permit to touch at foreign port

Whenever any vessel, licensed for carrying on the fishery, is intended to touch and trade at any foreign port, it shall be the duty of the master or owner to obtain permission for that purpose from the collector of the district where such vessel may be, previous to her departure, and the master of every such vessel shall deliver like manifests, and make like entries, both of the vessel and of the merchandise on board, within the same time, and under the same penalty, as are by law provided for vessels of the United States arriving from a foreign port. R.S. § 4364.

Historical Note

Derivation. Act Feb. 18, 1793, c. 8, § 21, 1 Stat. 313.

Cross References

Canal boats or boats employed on internal waters or canals of any state, exemption from requirements of this section, see section 336 of this title.

Vessels licensed for "coasting trade and mackerel fishery", application of section to, see section 263 of this title.

§ 311. Penalty for touching at foreign port without permission

Whenever a vessel, licensed for carrying on the fisheries, is found within three leagues of the coast, with merchandise of foreign growth or manufacture, exceeding the value of \$500, without having such permission as is directed by section 310 of this title, such vessel, together with the merchandise of foreign growth or manufacture imported therein, shall be subject to seizure and forfeiture. R.S. § 4365.

Historical Note

Derivation. Act Feb. 18, 1793, c. 8, § 21, 1 Stat. 313.

Cross References

Canal boats or boats employed on internal waters or canals of any state, exemption from requirements of this section, see section 336 of this title.

Vessels licensed for "coasting trade and mackerel fishery", application of section to, see section 263 of this title.

§ 312. Report of arrival at port other than that of destination

The master of every vessel employed in the transportation of merchandise from district to district, that shall put into a port other than the one to which she was bound, shall, within twenty-four hours of his arrival, if there be an officer residing at such port, and she continue there so long, make report of his arrival to such officer, with the name of the place he came from, and to which he is bound, with

an account of his lading; and every master who neglects or refuses so to do shall be liable to a penalty of \$20. R.S. § 4366.

Historical Note

Derivation. Act Feb. 18, 1793, c. 8, § 22, 1 Stat. 314.

Cross References

Canal boats or boats employed on internal waters or canals of any state, exemption from requirements of this section, see section 336 of this title.

Notes of Decisions

1. Forfeiture of coastwise vessel

Coastwise vessel, forfeited for proceeding on foreign voyage without giving up enrollment, is forfeited for customs violation, and may be used by government. The Alert, D.C.N.Y.1927, 24 F. 2d 239.

§ 313. Foreign vessels bound coastwise

The master of every foreign vessel bound from a district in the United States to any other district within the same, shall, in all cases, previous to her departure from such district, deliver to the collector of such district duplicate manifests of the lading on board such vessel, if there be any, or, if there be none, he shall declare that such is the case; and to the truth of such manifest or declaration he shall swear, and also obtain a permit from the collector, authorizing him to proceed to the place of his destination. R.S. § 4367.

Historical Note

Derivation. Act Feb. 18, 1793, c. 8, § 24, 1 Stat. 314.

Cross References

Canal boats or boats employed on internal waters or canals of any state, exemption from requirements of this section, see section 336 of this title.

Notes of Decisions

Alaska 3

Repeals 1

1. Repeals

Act Mar. 1, 1817, c. 31 (incorporated in part in section 121 of this title) did not repeal this section. 1830, 2 Op.Att'y.Gen. 392.

2. Alaska

Provisions of this section, requiring the master of every foreign vessel bound from a district in the United States to any other district within the same, to deliver, previous to departure, a manifest to the collector, apply to Alaska. 1902, 24 Op.Att'y.Gen. 57.

§ 314. Delivery of manifest of foreign vessel

The master of every foreign vessel, on his arrival within any district from any other district, shall, in all cases, within forty-eight hours after his arrival, and previous to the unloading of any goods from on board such vessel, deliver to the collector of the district

where he may have arrived, a manifest of the goods laden on board such vessel, if any there be; or if in ballast only, he shall so declare; he shall swear to the truth of such manifest or declaration, and shall also swear that such manifest contains an account of all the merchandise which was on board such vessel at the time, or has been since her departure from the place from whence she shall be reported last to have sailed; and he shall also deliver to such collector the permit which was given him from the collector of the district from whence he sailed. R.S. § 4368.

Historical Note

Derivation. Act Feb. 18, 1793, c. 8, § 24, 1 Stat. 314.

Cross References

Canal boats or boats employed on internal waters or canals of any state, exemption from requirements of this section, see section 336 of this title.

§ 315. Penalty against foreign vessels trading coastwise

Every master of any foreign vessel who neglects or refuses to comply with any of the requirements of sections 313 and 314 of this title, shall be liable to a penalty of \$100. Nothing therein contained shall, however, be construed as affecting the payment of tonnage, or any other requirements to which such vessels are subject by law. R.S. § 4369.

Historical Note

Derivation. Act Feb. 18, 1793, c. 8, § 24, 1 Stat. 314.

Cross References

Canal boats or boats employed on internal waters or canals of any state, exemption from requirements of this section, see section 336 of this title.

Notes of Decisions

1. Jurisdiction

The jurisdiction of a court of admiralty to enforce a lien for the penalty, on failure of the master of a foreign vessel

to notify of its arrival or enter the manifest, does not depend upon seizure of the vessel before libel brought. *The Paolina S.*, C.C.N.Y.1880, 11 F. 171.

§ 316. Use of foreign vessels in United States ports—Towing United States vessels; fines and penalties

(a) It shall be unlawful for any vessel not wholly owned by a person who is a citizen of the United States within the meaning of the laws respecting the documentation of vessels and not having in force a certificate of registry, a certificate of enrollment, or a license, issued pursuant to this title, or a certificate of award of number issued pursuant to section 288 of this title, to tow any vessel other than a vessel of foreign registry, or a vessel in distress, from any port or place in the United States, its Territories or possessions, embraced

within the coastwise laws of the United States, to any other port or place within the same, either directly or by way of a foreign port or place, or to do any part of such towing, or to tow any such vessel, from point to point within the harbors of such places. The owner and master of any vessel towing another vessel in violation of the provisions of this section shall each be liable to a fine of not less than \$250 nor more than \$1,000, which fines shall constitute liens upon the offending vessel enforceable through the district court of the United States for any district in which such vessel may be found, and clearance shall not be granted to such vessel until the fines have been paid. The towing vessel shall also be further liable to a penalty of \$50 per ton on the measurement of every vessel towed in violation of this section, which sum may be recovered by way of libel or suit.

Person defined

(b) The term "person" as used in subsection (a) of this section, shall be held to include persons, firms, partnerships, associations, organizations, and corporations, doing business or existing under or by the authority of the laws of the United States, or of any State, Territory, district, or other subdivision thereof.

Foreign railroad companies using ferries, tugboats, or towboats

(c) Any foreign railroad company or corporation, whose road enters the United States by means of a ferry, tugboat, or towboat, may own such vessel and operate the same in connection with the water transportation of the passenger, freight, express, baggage, and mail cars used by such road, together with the passengers, freight, express matter, baggage, and mails transported in such cars, without being subject to any other or different restrictions than those imposed by law on any vessel of the United States entering ports of the United States from ports in the same foreign country: *Provided*, That except as authorized by section 883 of this title, such ferry, tugboat, or towboat shall not, under penalty of forfeiture, be used in connection with the transportation of any merchandise shipped from any port or place in the United States, its Territories or possessions, embraced within the coastwise laws of the United States, to any other port or place within the same.

Salvaging operations by foreign vessels

(d) No foreign vessel shall, under penalty of forfeiture, engage in salvaging operations on the Atlantic or Pacific coast of the United States, in any portion of the Great Lakes or their connecting or tributary waters, including any portion of the Saint Lawrence River through which the international boundary line extends, or in territorial waters of the United States on the Gulf of Mexico, except when authorized by a treaty or in accordance with the provisions of section 725 of this title: *Provided, however*, That if, on investigation, the Commissioner of Customs is satisfied that no suitable vessel wholly owned by a person who is a citizen of the United States and docu-

mented under the laws of the United States or numbered pursuant to section 288 of this title, is available in any particular locality he may authorize the use of a foreign vessel or vessels in salvaging operations in that locality and no penalty shall be incurred for such authorized use.

Operations permitted by treaty

(e) Nothing in this section shall be held or construed to prohibit or restrict any assistance to vessels or salvage operations authorized by article II of the treaty between the United States and Great Britain "concerning reciprocal rights for United States and Canada in the conveyance of prisoners and wrecking and salvage" signed at Washington, May 18, 1908 (35 Stat. 2086), or by the treaty between the United States and Mexico "to facilitate assistance to and salvage of vessels in territorial waters", signed at Mexico City, June 13, 1935 (49 Stat. 3359). R.S. § 4370; June 11, 1940, c. 324, 54 Stat. 304; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Derivation. Acts July 18, 1866, c. 201, § 21, 14 Stat. 183; Feb. 25, 1867, c. 78, 14 Stat. 410.

References in Text. As originally enacted "this title" in subsec. (a) of this section read "Title XLVIII or Title L of the Revised Statutes." Title 48 of the Revised Statutes consisted of sections 4131-4196. Title 50 consisted of sections 4311-4390. For distribution of said sections in this Code, see Tables.

1940 Amendment. Subsec. (a) amended by Act June 11, 1940, which expanded subsec. (a) to include all vessels and increased the penalties for violations.

Subsecs. (b)-(e) added by Act June 11, 1940.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions,

to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Commissioner of Customs, referred to in this section, is an officer of the Treasury Department.

"Commissioner of Customs" was substituted for "Secretary of Commerce" in subsec. (d) on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Cross References

Canadian vessels aiding vessels wrecked or disabled in United States waters, see section 725 of this title.

Notes of Decisions

Review 2

Towing partly done in foreign waters 1

1. Towing partly done in foreign waters

A British tug was not liable where the towing was done partly on the

British side of the straits of San Juan de Fuca, even though it might have been done entirely on the American side, in the absence of any allegation that the British waters were entered collusively or for the purpose of evading the statute. *Dunsmuir v. Bradshaw*, Wash. 1892, 50 F. 440, 1 C.C.A. 525, appeal denied 53 F. 11, 3 C.C.A. 392.

Where the treaty between the United States and Great Britain of June 15, 1846, fixed the boundary between the two countries in the straits of San Juan de Fuca by a line following the middle of the strait, but also secured to each nation a right of free navigation over all the waters of the strait, the waters north of the boundary line were "foreign waters." U. S. v. The Steam Tug

Pilot, Wash.1892, 50 F. 437, 1 C.C.A. 523, appeal denied 53 F. 11, 3 C.C.A. 392.

2. Review

The Court of Appeals had jurisdiction of an appeal from a decree in admiralty holding that the waters north of the boundary line were not "foreign waters." The Pilot v. U. S., Wash.1892, 53 F. 11, 3 C.C.A. 392.

§ 317. Repealed. Feb. 28, 1933, c. 131, § 1, 47 Stat. 1349.

Historical Note

Section, R.S. § 4371, related to fees and forfeitures for trading without enrollment or license.

§ 318. Exemptions where license expires at sea

If any vessel be at sea at the expiration of the time for which the license was given, and the master of such vessel shall swear that such was the case, and shall also, within forty-eight hours after his arrival, deliver to the collector of the district in which he shall first arrive the license which shall have expired, the forfeiture prescribed in section 317 of this title shall not be incurred, nor shall the vessel be liable to pay the fees and tonnage therein required. R.S. § 4372.

Historical Note

Derivation. Act Feb. 18, 1793, c. 8, repealed by Act Feb. 28, 1933, c. 131, § 1, § 6, 1 Stat. 308. 47 Stat. 1349.

References in Text. Section 317 of this title, referred to in the text was

§ 319. Fine for trading without license

Every vessel of twenty tons or upwards, entitled to be documented as a vessel of the United States, other than registered vessels found trading between district and district, or between different places in the same district, or carrying on the fishery, without being enrolled and licensed, and every vessel of less than twenty tons and not less than five tons burden found trading or carrying on the fishery as aforesaid without a license obtained as provided by this chapter, shall be liable to a fine of \$30 at every port of arrival without such enrollment or license, and if she have on board any merchandise of foreign growth or manufacture (sea stores excepted), or any taxable domestic spirits, wines, or other alcoholic liquors, on which the duties or taxes have not been paid or secured to be paid, she shall, together with her tackle, apparel and furniture, and the lading found on board, be forfeited. Marks, labels, brands, or stamps, indicative of foreign origin, upon or accompanying merchandise or containers of merchandise found on board such vessel, shall be prima facie evi-

dence of the foreign origin of such merchandise. But if the license shall have expired while the vessel was at sea, and there shall have been no opportunity to renew such license, then said fine or forfeiture shall not be incurred. June 19, 1886, c. 421, § 7, 24 Stat. 81; Aug. 5, 1935, c. 438, Title III, § 314, 49 Stat. 529.

Historical Note

References in Text. The words "this chapter", referred to in the text, are a translation of "this title" appearing in the Act of June 19, 1886. That Act was not subdivided into titles, and section 7 did not expressly amend any section of the Revised Statutes. The term is therefore ambiguous, but probably was intended to refer to Title 50 of the Revised Statutes, set out, so far as still in force, in sections 251-255, 258, 259, 262-

280, 293, 306-316, 318, 321-330, and 333-335 of this title.

1935 Amendment. Act Aug. 5, 1935 amended section to provide for forfeiture, to deem marks, etc., prima facie evidence of foreign origin of merchandise, and to substitute words "said fine or forfeiture" for "said fine of \$30" in last sentence.

Notes of Decisions

Evidence 3

Forfeitures 4

Pleasure boats 1

Wages of seamen 2

1. Pleasure boats

Vessels used exclusively for pleasure, and not carrying freight or passengers for pay, were not liable to the penalty prescribed in former section 319 of this title for trading without a license. 1887, 18 Op.Atty.Gen. 544.

2. Wages of seamen

The fact that a coasting vessel has no license does not affect the right to wages if the seamen are ignorant thereof. *The Mary*, D.C.Mass.1852, Fed.Cas.No.9,190.

3. Evidence

On a libel for forfeiture, doubtful circumstances, which the original owners

might explain, have not the same weight against bona fide purchasers, who are not presumed to be conversant with them. *The Ruby*, C.C.Me.1830, Fed.Cas.No.12,104.

4. Forfeitures

A vessel not enrolled and licensed, but engaged exclusively in the foreign trade on Lake Champlain, did not become forfeit by having foreign goods on board. *U. S. v. The Margaret Yates*, D.C.Vt. 1849, Fed.Cas.No.15,720.

The sixth section of the coasting act of February, 1793, inflicted a forfeiture of the ship and cargo only in cases of unregistered vessels, found with foreign goods on board, in the coasting trade, and not of vessels licensed for the fisheries. *The Eliza*, C.C.Mass.1813, Fed.Cas.No.4,346.

§ 320. Remission or mitigation of fines

The fines imposed by sections 45, 77, 289, and 319 of this title shall be subject to remission or mitigation by the Commissioner of Customs when the offense was not willfully committed, under such regulations and methods of ascertaining the facts as may seem to him advisable. June 19, 1886, c. 421, § 9, 24 Stat. 81; Feb. 14, 1903, c. 552, § 10, 32 Stat. 829; Mar. 4, 1913, c. 141, § 1, 37 Stat. 736; 1946 Reorg.Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Codification. Upon incorporation into the Code the words "Secretary of Commerce" were substituted for "Secretary of the Treasury," to conform to Acts Feb. 14, 1903 and Mar. 4, 1913. See note under section 271 of this title.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31,

1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Commissioner of Customs, referred to in this section, is an officer of the Treasury Department.

"Commissioner of Customs" was substituted for "Secretary of Commerce" on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Cross References

Forfeitures, see sections 5601 et seq. and 7301 et seq. of Title 26, Internal Revenue Code.

Jurisdiction, fine, penalty or forfeiture, see section 1355 of Title 28, Judiciary and Judicial Procedure.

Mitigation, refunding and remission of penalties under laws relating to vessels, seamen, and customs, see sections 7 and 8 of this title and section 1613 of Title 19, Customs Duties.

§ 321. Penalty for illegal enrollment or license

Every collector, who knowingly makes any record of enrollment or license of any vessel, and every other officer, or person, appointed by or under them, who makes any record, or grants any certificate or other document whatever, contrary to the true intent and meaning of sections 251-255, 258, 259, 262-280, 293, 306-316, 318, 321-330, and 333-335 of this title, or takes any other or greater fees than are by such sections allowed, or receives for any service performed pursuant to such sections, any reward or gratuity, and every surveyor, or other person appointed to measure vessels, who willfully delivers to any collector or such officer or employee as the Secretary of the Treasury shall designate a false description of any vessel, to be enrolled or licensed, in pursuance of such sections, shall be liable to a penalty of \$500, and be rendered incapable of serving in any office of trust or profit under the United States. R.S. § 4373; June 17, 1930, c. 497, Title IV, §§ 523, 651(a) (1), 46 Stat. 740, 762; Aug. 8, 1953, c. 397, § 2(d), 67 Stat. 508.

Historical Note

Derivation. Act Feb. 13, 1793, c. 8, § 29, 1 Stat. 315.

Codification. Upon incorporation into the Code, the words "comptroller of customs" were substituted for "naval officers" to conform to Act Sept. 21, 1922, c. 356, § 523, 42 Stat. 974, which was re-

pealed by section 651(a) (1) of Act June 17, 1930. Section 523 of said Act June 17, 1930, classified to section 1523 of Title 19, Customs Duties, continued naval officers of customs as comptrollers of customs. Said section 523 of said Act June 17, 1930, was amended by Act Aug.

8, 1953, which omitted references to comptrollers of customs and substituted reference to the Secretary of the Treasury or such officer or employee as he shall designate. The words "such offi-

cer or employee as the Secretary of the Treasury shall designate" were substituted for "comptrollers of customs" to reflect such change.

Cross References

Canal boats or boats employed on internal waters or canals of any state, exemption from requirements of this section, see section 336 of this title.

§ 322. Penalty for malfeasance

Every person, authorized and required by sections 251-255, 258, 259, 262-280, 293, 306-316, 318, 321-330, and 333-335 of this title to perform any act or thing as an officer, who willfully neglects or refuses to do and perform the same, according to the true intent and meaning of such sections, shall, if not subject to the penalty and disqualifications prescribed in section 321 of this title, be liable to a penalty of \$500 for the first offense, and of like sum for the second offense, and shall, after conviction for the second offense, be rendered incapable of holding any office of trust or profit under the United States. R.S. § 4374.

Historical Note

Derivation. Act Feb. 18, 1793, c. 8, § 29, 1 Stat. 315.

Notes of Decisions

1. Pleading

Allegations of complaint were insufficient in action against collector of cus-

toms for penalty under Act 1852, § 24, 10 Stat. 71. *Briscoe v. Hinman*, D.C.Or. 1869, Fed.Cas.No.1,887.

§ 323. Penalty for forgery and alteration

Every person who forges, counterfeits, erases, alters, or falsifies any enrollment, license, certificate, permit, or other document, mentioned or required in sections 251-255, 258, 259, 262-280, 293, 306-316, 318, 321-330, and 333-335 of this title, to be granted by any officer of the revenue, such person, so offending, shall be liable to a penalty of \$500. R.S. § 4375.

Historical Note

Derivation. Act Feb. 18, 1793, c. 8, § 30, 1 Stat. 316.

Cross References

Ship's papers, counterfeiting and forgery, see section 507 of Title 18, Crimes and Criminal Procedure.

§ 324. Penalty for obstructing officers

Every person who assaults, resists, obstructs, or hinders any officer in the execution of any Act or law relating to the enrollment, registry, or licensing of vessels, or of sections 251-255, 258, 259, 262-

280, 293, 306-316, 318, 321-330, and 333-335 of this title, or of any of the powers or authorities vested in him by any such Act or law, shall, for every such offense, for which no other penalty is particularly provided, be liable to a penalty of \$500. R.S. § 4376.

Historical Note

Derivation. Act Feb. 18, 1793, c. 8, § 31, 1 Stat. 316.

Cross References

Assault, penalty, see section 111 et seq. of Title 18, Crimes and Criminal Procedure.

§ 325. Penalty for violation of license

Whenever any licensed vessel is transferred, in whole or in part, to any person who is not at the time of such transfer a citizen of and resident within the United States, or is employed in any other trade than that for which she is licensed, or is employed in any trade whereby the revenue of the United States is defrauded, or is found with a forged or altered license, or one granted for any other vessel, or with merchandise of foreign growth or manufacture (sea stores excepted), or any taxable domestic spirits, wines, or other alcoholic liquors, on which the duties or taxes have not been paid or secured to be paid, such vessel with her tackle, apparel and furniture, and the cargo, found on board her, shall be forfeited. But vessels which may be licensed for the mackerel fishery shall not incur such forfeiture by engaging in catching cod or fish of any other description whatever. For the purposes of this section, marks, labels, brands, or stamps, indicative of foreign origin, upon or accompanying merchandise or containers of merchandise found upon any vessel, shall be prima facie evidence of the foreign origin of such merchandise. R.S. § 4377; Aug. 5, 1935, c. 438, Title III, § 313, 49 Stat. 528.

Historical Note

Derivation. Acts Feb. 18, 1793, c. 8, § 32, 1 Stat. 316; Apr. 20, 1836, c. 55, § 5 Stat. 16.

1935 Amendment. Act Aug. 5, 1935 amended section to subject to forfeiture any vessel employed in any trade whereby revenue of the United States is de-

frauded or which is found with merchandise of foreign growth or manufacture or any domestic alcoholic liquors on which duties or taxes have not been paid and to add the sentence making marks, etc., prima facie evidence of foreign origin of merchandise.

Cross References

Boarding vessels; search of persons and baggage, regulations, see sections 1581 and 1582 of Title 19, Customs Duties.

Canal boats or boats employed on internal waters or canals of any state, exemption from requirements of this section, see section 336 of this title.

Fine, penalty or forfeiture, jurisdiction, see section 1355 of Title 28, Judiciary and Judicial Procedure.

Forfeitures, see sections 5601 et seq. and 7301 et seq. of Title 26, Internal Revenue Code.

Mitigation, refunding and remission of penalties under laws relating to vessels, seamen, and customs, see sections 7 and 8 of this title and section 1618 of Title 19, Customs Duties.

Note 1

Nationality and naturalization, see section 1401 et seq. of Title 8, Aliens and Nationality.

Numbering undocumented vessels, see section 288 of this title.

Seizures, see section 1602 et seq. of Title 19, Customs Duties.

Ship's papers, counterfeiting and forgery, see section 507 of Title 18, Crimes and Criminal Procedure.

Unlawfully proceeding on foreign voyage, penalty, see section 278 of this title.

Notes of Decisions

Generally 3

Admissibility of evidence 23

Adverse claims 24

Bond, release on 17

Burden of proof 21

Cargo forfeited 14

Characteristics of trade or trading 9

Condemnation and sale 27

Construction 3

Costs 30

Criminal proceedings 15

Evidence

Admissibility 23

Sufficiency 23

Grounds for forfeiture in general 7

Illegal trading 8-11

Characteristics of trade or trading 9

Liquor transactions and smuggling 11

Single act of trading 10

Jurisdiction of proceedings 13

Jury trial 20

Knowledge

Lienors 6

Owners 5

Libel 19

Lienors

Knowledge of 6

Rights of 26

Liquor transactions and smuggling 11

Master's rights respecting illegal seizure 25

Owners, knowledge of 5

Ownership or transfer of vessel 12, 13

Trusts 13

Release from forfeiture 28

Repeal or modification 1

Restoration 29

Review 31

Seizures 16, 17

Bond, release on 17

Single act of trading 10

Sufficiency of evidence 23

Trusts 13

Vessels to which applicable 4

1. Repeal or modification

This section authorizing forfeiture of vessel engaging in trade for which she is not licensed, was not repealed in part by former section 40 of Title 27. *The Mineola*, C.C.A.Mass.1927, 18 F.2d 844.

The absolute forfeiture of a vessel under this section was not affected by the

provisions of former section 40 of Title 27. *The Cherokee*, D.C.Tex.1923, 292 F. 212.

2. Construction

This section is highly "penal" and must be strictly construed. *The Snapper King*, C.C.A.Miss.1942, 127 F.2d 490.

3. Generally

Forfeiture of vessel for carrying on unlicensed business is strictly in rem and not dependent on preliminary adjudication of personal guilt. *U. S. v. The Ruth Mildred*, N.Y.1932, 52 S.Ct. 473, 286 U.S. 67, 78 L.Ed. 981. See, also, *U. S. v. Corriveau*, 52 S.Ct. 578, 286 U.S. 530, 76 L.Ed. 1271.

Rights of claimant of vessel and cargo sought to be forfeited are not determined by what vessel might have done. *Alkane v. U. S.*, C.C.A.Mass.1930, 39 F. 2d 62, certiorari denied 50 S.Ct. 467, 281 U.S. 768, 74 L.Ed. 1175.

4. Vessels to which applicable

This section is not applicable to a vessel which is not licensed but has only a number issued under section 288 of this title. *Kirk v. U. S.*, C.C.A.Cal.1933, 64 F.2d 82.

Vessel of American registry sailing on high seas under number given by American collector of customs are subject to seizure and forfeiture for transporting prohibited liquors. *Ford v. Kline*, D.C. Fla.1930, 42 F.2d 558.

A vessel which had been enrolled and licensed under the Act of 1831 (similar in part to section 288 of this title) but whose license had become void by a subsequent sale, was no longer a licensed and enrolled vessel, so as to be subject to forfeiture by her sale in whole or in part to a foreigner. *U. S. v. The Sciota*, D.C.N.Y.1882, Fed.Cas.No. 16,240.

5. Knowledge—Owners

Shipowner's innocence is no defense to forfeiture in rem, though innocent owner may petition Secretary for remission or mitigation of forfeiture. *The Julia Davis*, C.C.A.N.J.1934, 72 F.2d 370.

Vessel licensed for fishing only and seized with cargo of foreign liquor was subject to this section directing forfeiture of vessel employed in trade other than that for which she is licensed, notwithstanding fact that vessel had been stolen and used without claimant's knowledge or consent. *Id.*

Ignorance of owner as to illegal use is no defense against forfeiture. *The Olympia*, D.C.Conn.1932, 58 F.2d 638.

Vessel licensed as pleasure yacht, but engaged in carrying liquor, was employed in trade outside license, subjecting vessel and cargo to forfeiture, regardless of owner's knowledge. *U. S. v. American Motor Boat K-1231*, C.C.A.N.Y.1931, 54 F.2d 502.

Innocence of owner of vessel is not defense to forfeiture in rem incurred under navigation laws. *The Pilot*, C.C.A. N.C.1930, 43 F.2d 491.

Want of knowledge of owner is not a defense to suit for forfeiture of vessel for violation of license. *The Dante*, D. C.La.1926, 17 F.2d 304.

Owner, having leased vessel, cannot plead lack of knowledge as ground for resisting forfeiture, under this section, for engaging in trade other than that for which she was licensed. *The Mineola* (C. C.A.Mass.1927) 16 F.2d 844.

Where license granted tug provided that it should not be used in trade whereby revenue of United States might be defrauded, whether owner thereof had knowledge that tug was being used to tow lighter laden with liquor from ship at sea, and therefore subjecting her to forfeiture, within this section, was immaterial. *The Esther M. Rendle* (C.C.A. Mass.1925) 7 F.2d 545.

A licensed vessel shall be forfeited for the transfer to an alien or nonresident of any interest in vessel or for her employment in a trade other than that for which she is licensed, and guilty knowledge on the part of any owner need not be proved. *Braga v. Braga*, 1943, 51 N.E. 2d 429, 314 Mass. 666.

6. — Liens

Maritime lien, once attaching, will survive forfeiture, absent guilty knowledge in lienor of illegal use. *The Olympia* (D. C.Conn.1932) 58 F.2d 638.

Innocence of mortgage lienholders is no defense to forfeiture for violation of this section. *The Hammett L. Robbins* (D.C. Va.1931) 50 F.2d 132.

Where decree forfeited vessel for violation of title, under libel based on ves-

sel's engaging in unlicensed trade and illegal transportation of liquor, rights of innocent lienor for supplies furnished were available. *The Antigostine* (D.C. N.Y.1930) 44 F.2d 170.

Innocent lienor having furnished supplies to vessel forfeited was not barred by laches from right to vacate forfeiture, where not apprised of seizure until after forfeiture. *Id.*

7. Grounds for forfeiture in general

This section authorized forfeiture of trading vessels for previously trading outside of their licenses, though vessels were not violating licenses at time of seizure. *The Sterling* (C.C.A.La.1933) 65 F.2d 439.

Under this section, forfeiture of vessel trading outside of its license does not depend on seizure; doing of forbidden act itself effects forfeiture. *Id.*

A lawful seizure is not prerequisite to forfeiture; therefore a vessel, although not engaged in smuggling operations or in violation of law when seized, was subject to forfeiture for past offenses. *The Sea Hawk* (D.C.Tex.1930) 45 F.2d 437.

Vessel engaged in unlawful trade is liable to forfeiture under this section for violating license. *Alksne v. U. S.* (C.C.A. Mass.1930) 39 F.2d 62, certiorari denied 50 S.Ct. 467, 281 U.S. 768, 74 L.Ed. 1175.

A vessel sailing under a fishing license may touch at a foreign port, and procure supplies, without incurring forfeiture under the acts of Congress. *The Willie G.* (D.C.Me.1870) Fed.Cas.No. 17,762. See, also, *The Ocean Spray* (D.C.Or.1876) Fed. Cas.No. 10,412.

It is a violation of this section for a vessel enrolled and licensed for the fisheries, and which is actually engaged in the business of fishing, to purchase and take on board at a foreign port a quantity of fish for trade. *The Schooner Three Brothers* (C.C.Mass.1812) 1 Gall. 142, 23 Fed.Cas.No. 14,009.

8. Illegal trading

Vessel licensed for commercial purposes, violating terms and conditions in engaging in trade other than that for which she was licensed, was liable to forfeiture. *U. S. v. Wischerth* (C.C.A. N.Y.1933) 68 F.2d 161.

Vessels licensed to engage in fishing only and found engaged in illegal trade became subject to forfeiture. *The Pilot* (C.C.A.N.C.1930) 43 F.2d 491.

Under this section forfeiture of vessel is absolute, if she is employed in any other

Note 8

trade than that for which she is licensed, and whether intoxicating liquors or other merchandise are carried in such use is immaterial. *The Mineola* (C.C.A.Mass. 1927) 16 F.2d 844.

A vessel licensed for the fisheries which brings merchandise from a foreign port with the knowledge or consent of her officers, is engaged in other trade, and is liable to forfeiture. *The Ocean Bride* (D. C.Me.1871) Fed.Cas.No. 10,404.

Since the Act of 1823, c. 119, 4 Stat. 312 (section 263 of this title), mackerel fishery could not be lawfully carried on under a license for the cod fishery. *The Schooner Nymph* (C.C.Me.1834) 1 Sumn. 516, 18 Fed.Cas.No. 10,388.

Exportation of American produce in American vessels to British ports on the continent not enumerated as open ports was not unlawful so as to subject vessel to forfeiture under this section. *The Atlantic* (D.C.Me.1827) Fed.Cas.No. 621.

A vessel licensed for the coasting trade, or fisheries, if engaged in an illegal traffic, is forfeitable. *The Two Friends* (C.C. Mass.1812) Fed.Cas.No. 14,289. See, also, *U. S. v. The Mars* (C.C.Mass.1812) Fed. Cas.No. 15,723; *The Julia* (C.C.Mass. 1812) Fed.Cas.No. 7,574, affirmed 12 U.S. 181, 8 Cranch 181, 3 L.Ed. 528; *The Eliza* (C.C.Mass.1813) Fed.Cas.No. 4,346; *The Resolution* (C.C.Mass.1814) Fed.Cas.No. 11,709.

A vessel licensed for the cod fishery may be forfeited for engaging in transporting goods. *The Active* (C.C.Conn. 1809) Fed.Cas.No. 35, modified on other grounds 11 U.S. 100, 7 Cranch 100, 3 L.Ed. 282.

9. — Characteristics of trade or trading

Under this section, "trade" is synonymous with business and implies a regular occupation and not a temporary turning aside from some other trade, and this section is intended to penalize a vessel for turning aside from trade for which she is licensed to engage in another trade as a regular course of business. *The Snapper King*, C.C.A.Miss.1942, 127 F.2d 490.

A \$15,000 vessel licensed for mackerel fisheries was not subject to forfeiture under this section for carrying passengers on two separate and unconnected occasions on ground that vessel was employed in a "trade" other than that for which she was licensed, where vessel had been hired under charters by parties of young men to take them to an island for fishing and bathing. *Id.*

As used in navigation acts, "trade" is synonymous with "business," the "trade" or "business" of a vessel licensed for coastwise trade being the transportation of freight and passengers for hire between ports of the United States. *U. S. v. Picou* (C.C.A.Ala.1934) 71 F.2d 854.

That pleasure yacht was carrying for crew stolen lobsters taken out of season on single occasion without hire did not constitute "engaging in trade." *The Chiquita*, C.C.A.Cal.1930, 44 F.2d 302.

Taking on board in a foreign port, and bringing into this country, two barrels, without hire or reward, but as a favor to a friend, supposed to contain crockery, but really containing liquors, is not engaging in trade, and does not subject the vessel and cargo to forfeiture. *The Willie G.* (D.C.Me.1870) Fed.Cas.No. 17,762.

The word "trade" is not here used in a restrictive sense as equivalent to traffic, but is rather intended as equivalent to "occupation, employment or business for gain or profit." *U. S. v. The Parynthia Davis* (D.C.Me.1858) 3 Ware 159, 27 Fed.Cas.No. 16,004, affirmed Fed. Cas.No. 16,003.

The fishing business is a trade within the meaning of this section. *Id.*

The cod fishery is a trade within the meaning of this section and so is the mackerel fishery. *The Schooner Nymph* (C.C.Me.1834) 1 Sumn. 516, 18 Fed.Cas. No. 10,388.

The carrying of cattle from an island to the main land in going out or returning, when done gratuitously, is not an act of trading. *The Swallow* (D.C.Me.1822) Fed.Cas.No. 13,666.

If a vessel licensed for the fisheries take on board goods with intent to transport them on an illicit voyage, it is sufficient "trade other than that for which she is licensed" within this section. *The Schooner Two Friends* (C.C.Mass.1812) 1 Gall. 118, 24 Fed.Cas.No. 14,289.

10. — Single act of trading

A single act of trading not authorized by the license will work forfeiture, even though the business of the license is still continued. *U. S. v. The Parynthia Davis* (D.C.Me.1858) 3 Ware 159, 27 Fed.Cas.No. 16,004, affirmed Fed.Cas.No. 16,003.

A single act of trading will forfeit a vessel licensed for the fisheries. *The Swallow* (D.C.Me.1822) Fed.Cas.No. 13,666. See, also, *The Ocean Bride* (D.C.Me.1871) Fed.Cas.No. 10,404; *U. S. v. The Reindeer* (C.C.R.I.1848) Fed.Cas.No. 10,145.

11. Liquor transactions and smuggling

Action of government in seeking forfeiture of alcohol for violation of customs and navigation laws did not estop government from collecting tax, especially where no reference was made in libel and no evidence was introduced with respect to tax due. *U. S. v. Rizzo* (N.J.1936) 56 S.Ct. 580, 297 U.S. 530, 80 L.Ed. 844.

A vessel violating its license by carrying intoxicating liquors could be forfeited under this section and resort to former section 40 of Title 27 was not necessary. *U. S. v. The Ruth Mildred*, N.Y.1932, 52 S.Ct. 473, 286 U.S. 67, 76 L.Ed. 981. See, also, *U. S. v. Corriveau*, N.Y.1932, 52 S.Ct. 578, 286 U.S. 530, 76 L.Ed. 1271.

A vessel which carried whisky on which no tax had been paid was defrauding United States revenue, and hence engaged in "other trade than that for which she is licensed," within terms of this section rendering vessel liable to forfeiture. *The Ulster*, C.C.A.N.J.1937, 91 F.2d 490.

The forfeiture of vessel for carrying untaxed liquor in violation of license could be prosecuted in proceedings authorized by this section for cases of violation of license, as against contention that proceeding had to be under section 7301 of Title 26. *Id.*

Vessels operating under licenses containing word "fishing" after word "service" in corner, but stating in body thereof that licenses were granted to carry on coasting trade, could carry any lawful merchandise in such trade, and hence were not subject to forfeiture for carrying intoxicating liquors after repeal of prohibition amendment; words "service fishing" not curtailing words "coasting trade." *The Pueblos* (C.C.A.Conn.1935) 77 F.2d 618.

Transporting intoxicating liquor from a vessel on the high seas with intent to illegally import it into the United States would constitute a violation of a coastwise license. *U. S. v. Picou*, C.C.A.Ala. 1934, 71 F.2d 854.

Vessel was engaged in unlawful occupation in violation of license, where, at time of seizure, she was being pursued for illegally landing liquor and had not completed voyage made for unlawful undertaking. *The Mary*, C.C.A. Mass.1933, 63 F.2d 18.

Government may forfeit licensed coastwise vessel under Tariff Act or navigation laws for unlawfully importing liquor,

regardless of prosecution under Prohibition Act. *The Patricia*, C.C.A. N.Y.1933, 62 F.2d 1054, certiorari denied 53 S.Ct. 690, 289 U.S. 747, 77 L.Ed. 1493.

Vessel engaged in unlawful trade, contrary to license, need not be proceeded against under National Prohibition Act because contraband cargo was liquor. *U. S. v. Hamilton*, C.C.A.Va.1932, 62 F.2d 29.

Vessels transporting intoxicating liquor in violation of coasting trade licenses are liable to seizure and condemnation, regardless of National Prohibition Act. *The Fidelia*, C.C.A.La. 1932, 58 F.2d 744.

Boat licensed as "pleasure vessel" making contact with foreign vessel on high seas and receiving prohibited liquors therefrom for transportation and illegal sale in the United States, engaged in trade justifying forfeiture under this section. *The Winnie*, D.C.Pa.1932, 58 F.2d 653.

Where crew of liquor carrying vessel in violation of shipping and customs laws fled and vessel was abandoned when captured, government was not required to resort to National Prohibition Law for forfeiture. *U. S. v. American Motor Boat K-1231*, C.C.A.N.Y.1931, 54 F.2d 502.

Government was not required to resort to National Prohibition Law for forfeiture when liquor was found aboard, if no one was then in the act of transporting liquor therein. *Maniscalco v. U. S.*, C.C.A.Mass.1931, 53 F.2d 737.

Forfeiture should be had under this section rather than under former section 40 of Title 27 where vessel was found abandoned and with no liquor then on board. *Corriveau v. U. S.*, C.C.A.R.I.1931, 53 F.2d 735. See, also, *United States v. Corriveau*, N.Y.1932, 52 S.Ct. 578, 286 U.S. 530, 76 L.Ed. 1271.

Federal officers, having discovered occupants of motorboat transporting liquor, were required to forfeit boat under Prohibition Act, not customs laws. *Colon v. Hanlon*, C.C.A.Porto Rico, 1931, 50 F.2d 353.

Where occupants of motorboat were acquitted of unlawfully transporting liquor, boat could not be forfeited under Prohibition Act, and should be returned to claimant. *Id.*

Vessel engaging in unlawful trade contrary to terms of license need not be proceeded against under Title 27 because contraband cargo she carried

Note 11

was liquor. *The Pilot*, C.C.A.N.C.1930, 43 F.2d 491.

Cargo and vessel, where not seized while transporting liquors, but while tied at wharf, and criminal prosecutions were had under Tariff Act, were subject to forfeiture for violating license. *Alksne v. U. S.*, C.C.A.Mass.1930, 39 F.2d 62, certiorari denied 50 S.Ct. 467, 281 U.S. 768, 74 L.Ed. 1175.

Vessel carrying liquor was subject to forfeiture, without showing whether she was engaged in foreign or in coasting trade. *Le Bouef v. U. S.*, C.C.A.Ala. 1929, 30 F.2d 394.

A gas motor boat, licensed for the coasting trade, which was found near the coast with a cargo of intoxicating liquor, being unloaded on shore and bearing foreign marks, was subject to forfeiture under this section for being employed in a trade other than that for which she was licensed. *The Dante*, D.C.La.1926, 17 F.2d 304.

Tug licensed for coasting trade, found loaded with liquor, was engaged in trade other than for which licensed, and with cargo subject to forfeiture. *The Lorraine Rita*, D.C.Pa.1926, 18 F.2d 607.

Tug licensed for coasting trade, in towing lighter loaded with alcohol from vessel at sea to harbor of United States, was subject to forfeiture, as employed in trade other than that for which she was licensed. *The Esther M. Rendle*, C.C.A.Mass.1926, 13 F.2d 839, certiorari denied 47 S.Ct. 240, 273 U.S. 730, 71 L.Ed. 863. See, also, *The Esther M. Rendle*, C.C.A.Mass.1925, 7 F.2d 545.

A vessel licensed for coastwise trade, found bringing in a cargo of more than 400 cases of alcohol, was subject to forfeiture under this section for trading outside her license. *The Amriald*, D.C.R.I.1925, 6 F.2d 413.

A vessel licensed in the coastwise trade in taking contraband cargo from foreign ships at sea, with which she was proceeding toward the coast, was employed in a trade other than that for which she was licensed, and subject to forfeiture under this section. *The Rosalie M.*, D.C.Tex.1925, 4 F.2d 815, affirmed 12 F.2d 970.

Where a vessel licensed for coastwise trade, under E.S. Title 50 (this chapter) victualled a British ship on the high seas hovering off the port of New York to sell contraband spirits she was employed in a trade other than that for which she was licensed, in violation of this section as the trade must terminate

in a port of the United States or the vessel must be registered. *The Alex Clark*, D.C.N.Y.1923, 294 F. 904.

Where vessel was found carrying cargo of liquor instead of pursuing calling described in license, government was not required to proceed under National Prohibition Act, but could maintain forfeiture proceedings under Tariff Act or navigation laws. *The Felicia*, D.C.N.Y. 1936, 13 F.Supp. 959.

Institution of criminal proceeding for conspiracy to violate Tariff Act and National Prohibition Act did not constitute election precluding government from maintaining forfeiture proceeding under Tariff Act or navigation laws. *Id.*

Launch licensed for coastwise trade was subject to forfeiture for receiving intoxicating liquors from foreign vessel for unlawful transportation to shore. *The Isabel H.*, D.C.N.Y.1933, 2 F.Supp. 896, affirmed 70 F.2d 246.

Vessel licensed for coastal trade was subject to forfeiture while in customs collector's possession for transporting intoxicating liquor without permit. *The Elizabeth S.*, D.C.N.Y.1933, 2 F.Supp. 270.

A vessel licensed for the coasting trade engaged in smuggling foreign goods is forfeited under this section. *The Resolution*, C.C.Mass.1814, 2 Gall. 47, 20 Fed.Cas.No.11,709.

12. Ownership or transfer of vessel

Sale of American ship under foreign judgment enforcing lien divested her nationality, and was not subject to collateral attack for failure to comply with statutes regulating sale to alien. *The Chiquita*, C.C.A.La.1927, 19 F.2d 417.

An enrolled vessel sailing under a fishing license was not liable to forfeiture because her part owner, a citizen of the United States, resided in a foreign country. *The Henry*, D.C.Me.1867, Fed.Cas.No.6373.

A licensed vessel transferred in whole, or in part, to a foreigner, is forfeited under this section, notwithstanding upon such transfer by section 266 of this title the license is no longer in force. *The Two Friends*, C.C.Mass.1832, 1 Gall. U.S., 118, 24 Fed.Cas.No.14,259.

The mere debiting of an interest in a vessel on the settlement of accounts between parties is not of itself a transfer of the vessel. *Peterson v. U. S.*, C.C.Pa. 1807, Fed.Cas.No.11,666.

The sale of a licensed vessel to a foreigner is not void, but the vessel is liable to forfeiture. *Phillips v. Leakey*, C.C.

Pa.1805, 1 Wash., U.S., 226, 19 Fed.Cas. No.11,096.

No coaster can be sold in a foreign port unless her license be previously surrendered, and her American character is not changed by the transfer. *U. S. v. The Hawke*, D.C.S.C.1794, Fed.Cas.No. 15,331.

The sale of a licensed schooner to a British subject, followed by an order to the master to make delivery to him, and the presentation of a request for clearance by the captain, which recites the sale, and is signed and sealed by the British consul, though the delivery is not yet actually made, is a "transfer." *U. S. v. The Vermont*, D.C.Conn., Fed. Cas.No.16,618a.

Transfer to an alien or nonresident of an interest in licensed vessel makes vessel liable to forfeiture, though such transfer makes the license void under section 266 of this title. *Braga v. Braga*, 1943, 51 N.E.2d 429, 314 Mass. 666.

13. — Trusts

Any illegality with respect to earnings of fishing vessel did not preclude enforcement of resulting trust in favor of alien purchaser of an interest in the vessel who took title thereto in the name of her son, though purchase price of the interest was paid in part out of such earnings. *Braga v. Braga*, 1943, 51 N.E.2d 429, 314 Mass. 666.

Alien owner of equitable interest in fishing vessel would not be punishable for any crime committed by one acting as her agent in procuring enrollment and license of the vessel unless equitable owner participated in agent's act. *Id.*

If there was any violation of section 60 of this title in procuring enrollment of a fishing vessel, the legal title to alien's equitable interest in which stood in the name of her son who was born in the United States, the vessel and not owner was the offender, and the penalty was forfeiture. *Id.*

That alien purchased an interest in fishing schooner, subsequently enrolled, while in process of construction in shipyard, taking title in name of son who was born in United States, did not render vessel liable to forfeiture, even assuming that ownership by alien of equitable interest would offend this section and section 221 of this title as much as ownership of a legal interest. *Id.*

Cause of action for enforcement of a resulting trust in favor of alien who purchased an interest in fishing schooner

while in process of construction in shipyard taking title in the name of her son antedated and arose independently of any possible violations in procuring enrollment and license of vessel, so that any such violations did not preclude equitable relief to enforce the trust. *Id.*

14. Cargo forfeited

A licensed fishing vessel is liable to forfeiture for sailing laden with goods with intent to carry them to another place, without a license therefor, though the goods are wholly of domestic growth and manufacture, and not liable to any duty, but such cargo is not liable to forfeiture unless it belong to the master, owner, or a mariner of the vessel. *The Active v. U. S.*, Conn.1812, 11 U.S. 100, 7 Cranch 100, 3 L.Ed. 232.

The cargo found on board at the time of seizure is forfeited, and not merely the cargo on board at the time of committing the offense. *The Two Friends*, C.C.Mass.1812, Fed.Cas.No.14,289.

15. Criminal proceedings

Dismissal of indictment against crew for liquor conspiracy did not bar libel forfeiting vessel for license violation. *The K-5691*, D.C.N.Y.1931, 50 F.2d 180.

Proceedings for forfeiture of cargo of vessel engaged in trade other than that for which she was licensed may be obtained, notwithstanding there was illegal search and seizure which barred criminal prosecution under liquor laws. *U. S. v. 1,572 Cases of Assorted Liquors*, D.C.N.Y.1933, 4 F.Supp. 1017.

16. Seizures

Liability of vessel for unlawfully proceeding on foreign voyage and engaging in trade without license is within law authorizing seizure by customs officers. *Mani v. U. S.*, Conn.1927, 47 S.Ct. 735, 274 U.S. 501, 71 L.Ed. 1171.

Coast Guard may, on probable cause, stop vessel on high seas when sailing under American flag, and may search and seize vessel on discovering contraband liquor therein. *Ford v. Kline*, D. C.Fla.1930, 42 F.2d 553.

Vessel licensed for coasting trade is subject to seizure, on taking intoxicating liquors from foreign ship at sea for purpose of importing same. *The Rosalie M.*, C.C.A.Tex.1928, 12 F.2d 970.

American vessel, navigated in violation of United States laws, can be apprehended on high seas by officers acting within scope of their authority, notwithstanding section 1581 of Title 19, Customs Duties. *Id.*

Note 16

In proceedings for forfeiture of vessel for employment in unlicensed trade, decided listing of vessel at dock, and fact that vessel was unattended, afforded probable cause for search. *The America*, D.C.N.Y.1933, 4 F.Supp. 774.

Cutting through floor of vessel's engine room in course of search was not unreasonable, in forfeiture proceedings for engaging in unlicensed trade, where nothing visible accounted for vessel's decided list. *Id.*

17. — Bond, release on

Vessel seized for violation of internal revenue law may be released on bond. *The Lynx*, II, D.C.N.Y.1926, 14 F.2d 697.

Vessel under arrest for a second violation of law will not be released under bond. *The K-13418*, D.C.Fla.1926, 14 F.2d 557.

Former section 751 of Title 28 (see section 1605 of Title 19) and Admiralty Rule 12, 28 U.S.C.A., relating to bonding of vessel are mandatory and require release on bond of vessel seized for violations of this section, irrespective of prior seizures. *The California*, D.C.N.Y.1926, 12 F.2d 270.

Under former section 754, now 2464, of Title 28, and notwithstanding former section 751 of Title 28 (see section 1605 of Title 19) and Admiralty Rule 12, 28 U.S.C.A., vessel seized by the United States for forfeiture under this section and other sections for transporting intoxicating liquors on high seas in violation of her license, was not subject to release to claimant on bond. *The Lorraine Rita*, D.C.Pa.1925, 6 F.2d 175.

18. Jurisdiction of proceedings

Court within district where vessel was seized because of carrying on trade other than that for which she was licensed had jurisdiction of forfeiture proceeding. *The Mary*, D.C.Mass.1932, 59 F.2d 771.

In libel for forfeiture of pleasure yacht for engaging in unlicensed trade federal District Court for District of New Jersey was without jurisdiction where yacht was seized on North River between low-water mark on New Jersey side and Manhattan Island. *The Rosemary*, D.C.N.J.1927, 23 F.2d 103.

Where fishing vessel was seized within territorial limits of Eastern district of New York, fact that Coast Guard completed search outside limits of such district did not defeat jurisdiction of court of that district in proceedings for forfeiture of cargo on ground vessel violated license. *U. S. v. 1,572 Cases of As-*

sorted Liquors, D.C.N.Y.1933, 4 F.Supp. 1017.

19. Libel

Libel charging that vessel licensed for coastwise trade engaged in a voyage with intent to transship intoxicating liquor from a vessel on the high seas and illegally import it into the United States sufficiently stated a case for the condemnation and forfeiture of such vessel for engaging in a trade other than that for which she was licensed. *U. S. v. Picon*, C.C.A.Ala.1934, 71 F.2d 854.

Libel for forfeiture of schooner engaged in unlicensed trade of carrying liquor not giving description of vessel it made contact with was sufficient. *U. S. v. 1,197 Sacks of Intoxicating Liquor*, D.C.Conn.1930, 38 F.2d 822.

Libel for forfeiture of vessel for engaging in trade for which she was not licensed was sufficient as against exception. *The Underwriter*, C.C.A.Conn. 1926, 13 F.2d 433, affirmed 47 S.Ct. 735, 274 U.S. 501, 71 L.Ed. 1171.

In libel of information to forfeit steam tug, under this section and section 278 of this title, general allegation that tug towed lighter laden with liquor into United States port, and that unloading of liquor and transportation of alcohol into United States was in violation of customs law, was sufficient, within rules of admiralty pleading. *The Esther M. Rendle*, C.C.A.Mass.1925, 7 F.2d 545.

A libel under Act Feb. 28, 1793, § 32 (this section) need not specify the particular trade in which the vessel was engaged at the time of the seizure. *U. S. v. The Paryntha Davis*, C.C.Me.1860, Fed.Cas.No.16,003.

20. Jury trial

In proceeding to forfeit vessel for violating customs and navigation laws, admiralty had jurisdiction under circumstances, though vessel touched shore, and claimant was not deprived of right to jury trial, especially where there was no fact question for jury. *U. S. v. American Motor Boat K-1231*, C.C.A.N.Y. 1931, 54 F.2d 502.

21. Burden of proof

Introduction of evidence warranting forfeiture of vessel, licensed as pleasure boat, for transporting intoxicating liquors for pay, cast burden on claimant to show absence of law violation. *Jackman v. U. S.*, C.C.A.Mass.1932, 56 F.2d 359.

Government, on failure of claimant to introduce any evidence, was only requir-

ed to show probable cause for instituting forfeiture proceeding. *U. S. v. Davidson*, C.C.A.R.I.1931, 50 F.2d 517, certiorari denied 52 S.Ct. 36, 284 U.S. 680, 78 L.Ed. 559.

Section 1615 of Title 19 placing burden of proof on the vessel applies to proceedings under this section. *The Chiquita*, D.C.Cal.1930, 41 F.2d 842, affirmed 44 F.2d 302.

One claiming exemption from forfeiture of cargo seized on board schooner engaged in unlicensed trade must plead facts showing ground for exemption. *U. S. v. 1,197 Sacks of Intoxicating Liquor*, D.C.Conn.1930, 38 F.2d 822.

On libel to forfeit licensed fishing vessel for carrying cargo, the burden is on the government to show by preponderance of evidence that the boat was violating the statute in question. *The Pilot*, D.C.Me.1929, 36 F.2d 250.

Burden of proving that liquor-laden vessel flying foreign flag was American vessel was on government seeking forfeiture. *The Chiquita*, C.C.A.La.1927, 19 F.2d 417.

A proceeding for the forfeiture of a vessel and cargo for violation of her license by carrying smuggled goods is a civil suit, and the government is not required to prove the allegations of its libel beyond a reasonable doubt, but by not more than a preponderance of evidence. *The Good Templar*, D.C.Mass. 1899, 97 F. 651.

22. Evidence—Admissibility

Intoxicating liquor, secured by search and seizure of vessels violating coast trade licenses, held admissible in forfeiture proceeding as against contention that it was discovered by unlawful search without probable cause. *The Fidella*, C.C.A.La.1932, 53 F.2d 744.

In suit to forfeit yacht for engaging in unlicensed trade, evidence tending to show illegal liquor transactions or general reputation in smuggling intoxicating liquors was admissible. *The Chiquita*, D.C.Cal.1930, 41 F.2d 842, affirmed 44 F.2d 302.

Indictment and pleas of guilty of owner of vessel and others of conspiracy to violate liquor and revenue laws are admissible in proceeding to forfeit vessel. *Alksne v. U. S.*, C.C.A.Mass.1930, 39 F.2d 62, certiorari denied 50 S.Ct. 467, 281 U.S. 738, 74 L.Ed. 1175.

Admissions of captain of vessel at time of seizure for violation of customs laws are competent in forfeiture proceedings.

The Rosalie M., C.C.A.Tex.1926, 12 F.2d 970.

On a libel for forfeiture for breach of a license to catch codfish, by catching mackerel at a certain time and place, parol evidence was admissible of catching mackerel at other times and places during the trip, as showing the real business of the voyage. *U. S. v. The Paryntha Davis*, C.C.Me.1860, Fed.Cas.No. 16,003.

23. — Sufficiency

Evidence supported decree forfeiting gas screw for being employed in trade other than that for which she was licensed. *The Winnie*, C.C.A.Pa.1933, 65 F.2d 708.

Evidence warranted finding that vessel licensed as pleasure yacht was engaged in carrying liquor. *Gaul v. U. S.*, C.C.A.R.I.1933, 62 F.2d 559, certiorari denied 53 S.Ct. 507, 238 U.S. 616, 77 L.Ed. 989.

Evidence in forfeiture proceedings warranted finding that vessel licensed as pleasure boat transported intoxicating liquors for pay. *Jackman v. U. S.*, C.C.A.Mass.1932, 56 F.2d 359.

Evidence that motorboat, licensed for fishing, was discovered alongside larger vessel on high seas, with burlap bags obviously obtained from larger vessel, and fled when approached by revenue vessel, established prima facie case for forfeiture for engaging in trade outside license. *The Gander*, C.C.A.Conn.1931, 54 F.2d 505.

Evidence established that motorboat was engaged in transporting intoxicating liquor, a trade other than that for which she was licensed, warranting forfeiture. *The Rethalulew*, C.C.A.Cal.1931, 51 F.2d 646.

Evidence warranted finding that pleasure vessel was employed in trade of unlawfully transporting liquor and was subject to forfeiture. *U. S. v. Davidson*, C.C.A.R.I.1931, 50 F.2d 517, certiorari denied 52 S.Ct. 36, 284 U.S. 680, 78 L.Ed. 559.

Evidence established probable cause for seizure of vessel and cargo because of employment in trade other than for which she was licensed. *The Hammitt L. Robbins*, D.C.La.1931, 50 F.2d 182.

Evidence showed that Coast Guard had probable cause to believe small vessel twenty-eight miles from shore was American vessel violating this section justifying seizure and forfeiture. *The K-5691*, D.C.N.Y.1931, 50 F.2d 180.

Note 23

Motor boat licensed for pleasure found deserted and awash, with a cargo of intoxicating liquor, was subject to forfeiture. *The Daisy T.*, D.C.Del.1931, 48 F.2d 870.

Evidence that vessel sought to evade search, and that crew were seen to throw bags of unknown contents overboard, explained by testimony that bags contained stolen lobsters, was insufficient to show violation of this section. *The Chiquita*, C.C.A.Cal.1930, 44 F.2d 302.

In proceeding for forfeiture of vessel and cargo, evidence supported finding that vessel seized came into port voluntarily at time of seizure, and not because she was in distress. *Alksne v. U. S.*, C.C.A.Mass.1930, 39 F.2d 62, certiorari denied 50 S.Ct. 467, 281 U.S. 768, 74 L.Ed. 1175.

Evidence in forfeiture proceeding showing manner in which liquors were obtained and transported and circumstances attending loading in vessel warranted finding that liquors were intended for beverage purposes. *Id.*

Evidence of finding illegal liquor on board vessel, and of owner's knowledge of its presence, justified forfeiture of vessel under this section, for engaging in unlicensed trade, where vessel was licensed for "party and work"; such license merely authorizing boat to take shipping parties for general work. *The K-3696*, D.C.N.Y.1929, 36 F.2d 430.

Evidence that licensed fishing vessel was seized while on trip to Nova Scotia to be delivered to purchaser while carrying electric light outfit, radio receiving sets, insulators, outboard motor, and other small items of cargo which occupied in all only small part of vessel's hold, did not warrant forfeiture of vessel as carrier of cargo of freight. *The Pilot*, D.C.Me.1929, 36 F.2d 250.

Fact that vessel is at sea with cargo establishes that she is engaged in trade. *Le Bouef v. U. S.*, C.C.A.Ala.1929, 30 F.2d 394.

Evidence did not sustain burden on government, seeking forfeiture of liquor-laden vessel, of proving that it was American vessel. *The Chiquita*, C.C.A.La.1927, 19 F.2d 417.

Evidence sustained finding that vessel was used by lessee in violation of license authorizing forfeiture. *The Mincola*, C.C.A.Mass.1927, 16 F.2d 844.

24. Adverse claims

Forfeiture of vessel for engaging in unlicensed trade relates back to time of

offense and cuts out all intervening claims to vessel, though acquired in good faith. *The Rethalulew*, C.C.A.Cal.1931, 51 F.2d 646.

25. Master's rights respecting illegal seizure

Order suppressing evidence in criminal proceeding against vessel's master and others because of illegal search and seizure of vessel laden with liquor did not extend to litigation not affecting master's personal status. *The Bettina*, D.C.N.Y.1933, 3 F.Supp. 39.

Vessel's master was without standing to move for vacation of attachment, dismissal of libel, and return of property seized because of alleged violation of tariff act and illegal trade, where sufficiency of libel was not attacked, and owner had not claimed res. *Id.*

26. Lienors, rights of

Forfeiture of vessel for violating navigation and customs laws did not preclude enforcement of maritime lien for labor and supplies furnished vessel, before violation, to enable her to go to sea. *Jackman v. U. S.*, C.C.A.R.I.1931, 54 F.2d 227.

Vessel seized in forfeiture proceeding and taken into customs collector's custody was not subject to attachment in admiralty proceeding in another district to recover for repairs and supplies furnished it. *The Don*, D.C.Del.1933, 4 F.Supp. 809.

27. Condemnation and sale

A vessel condemned for violation of the law, and sold under order of the court, may become foreign property. *U. S. v. The Hawke*, D.C.S.C.1794, Fed.Cas.No.15,331.

28. Release from forfeiture

Where owner of vessel subject to forfeiture for engaging in illegal trade is innocent, executive officers alone have authority to grant release from forfeiture. *The Pilot*, C.C.A.N.C.1930, 43 F.2d 491.

29. Restoration

Where vessel was lawfully forfeited, court had no jurisdiction to entertain proceedings for restoration. *Ford v. Kline*, D.C.Fla.1930, 42 F.2d 538.

30. Costs

Where there was probable cause for libel against yacht, her maneuvers were suspicious, and owner's neglect concerning use palpable, costs will be divided

The Chiquita, D.C.Cal.1930, 41 F.2d 842, affirmed 44 F.2d 302.

31. Review

In proceedings for forfeiture, findings of special master approved by trial court will not be set aside except for manifest error. The Chiquita, D.C.Cal.1930, 41 F.2d 842, affirmed 44 F.2d 302.

Reception of inadmissible evidence, where case was heard without jury, is not reversible error, where other abun-

dant evidence sustained sitting justice's conclusions. Alksne v. U. S., C.C.A.Mass. 1930, 39 F.2d 62, certiorari denied 50 S.Ct. 467, 281 U.S. 768, 74 L.Ed. 1175.

In libel by United States, under this section and section 278 of this title, decree, including costs "to be taxed," which put an end to litigation, was final, so as to require application for appeal within three months under former section 230, now 2107, of Title 28. The Albatross, C.C.A.N.J.1927, 19 F.2d 141.

§ 326. Exemption from forfeiture

Any merchandise on board any vessel which belongs, in good faith, to any person other than the master, owner, or mariners of such vessel, and upon which the duties have been paid, or secured according to law, shall be exempted from any forfeiture under sections 251-255, 258, 259, 262-280, 293, 306-316, 318, 321-330, and 333-335 of this title. R.S. § 4378.

Historical Note

Derivation. Act Feb. 18, 1793, c. 8, § 33, 1 Stat. 316.

Cross References

Canal boats or boats employed on internal waters or canals of any state, exemption from requirements of this section, see section 336 of this title.

Notes of Decisions

1. Generally

This section exempts from forfeiture a cargo not belonging to the owner, master, or mariners, provided that cargo was not liable to duties and whether this condition was produced by a previous payment of duties or by a perfect exemption from duties is immaterial. The Sloop Active v. U. S., Conn.1812, 11 U.S. 108, 7 Cranch 100, 3 L.Ed. 282.

This section does not refer to the case included in section 308 of this title, providing for forfeiture of foreign goods transported across the state of Delaware or New Jersey without permission of one of certain collectors, so as to control the forfeitures thereby inflicted. Priestman v. U. S., Pa.1800, 4 U.S. 28, 4 Dall. 28, 1 L.Ed. 727.

In proceeding to forfeit liquor cargo taken from vessel in distress, under consignment from one foreign port to another, master was not considered consignee merely because of absence of manifest. U. S. v. 1,197 Sacks of Intoxicating Liquor, D.C.Conn.1931, 47 F.2d 284.

Liquor cargo on board vessel was not subject to forfeiture after transfer to unlicensed vessel, necessitated by distress of former vessel. Id.

This section was inapplicable, where owners thereof participated in vessel's unlawful trade, and unless duties were paid or secured. Alksne v. U. S., C.C.A. Mass.1930, 39 F.2d 62, certiorari denied 50 S.Ct. 467, 281 U.S. 768, 74 L.Ed. 1175.

§ 327. Notice of seizure

In every case where a forfeiture of any vessel or merchandise shall accrue, it shall be the duty of the collector or other proper officer, who shall give notice of the seizure of such vessel or of such merchandise, to insert in the same advertisement the name and the

place of residence of the person to whom any such vessel and merchandise belonged or were consigned, at the time of such seizure, if the same be known to him. R.S. § 4379.

Historical Note

Derivation. Act Feb. 18, 1793, c. 8, § 28, 1 Stat. 315.

Cross References

Canal boats or boats employed on internal waters or canals of any state, exemption from requirements of this section, see section 336 of this title.

§ 328. Recovery of forfeitures and penalties

All penalties and forfeitures which shall be incurred by virtue of sections 251-255, 258, 259, 262-280, 293, 306-316, 318, 321-330, and 333-335 of this title may be sued for, prosecuted, and recovered as penalties and forfeitures incurred by virtue of the laws relating to the collection of duties, and shall be appropriated in like manner; except when otherwise expressly prescribed. R.S. § 4380.

Historical Note

Derivation. Act Feb. 18, 1793, c. 8, § 35, 1 Stat. 317.

Cross References

Enforcement of penalties and forfeitures under the customs laws, see section 1581 et seq. of Title 19, Customs Duties.

Notes of Decisions

Civil action 2
Jurisdiction 1

1. Jurisdiction

The trial of seizures under Act Feb. 18, 1793 (incorporated in this chapter) "for enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries, and for regulating the same," is to be in the judicial district in which the seizure was made, without regard to the district where the forfeitures accrued. *Keene v. U. S.*, Dist. Col. 1809, 9 U.S. 304, 5 Cranch 304, 3 L. Ed. 108.

2. Civil action

Debt will lie in favor of the United States to recover the penalty given by the embargo act for being knowingly concerned in a foreign voyage in violation of such act. *U. S. v. Allen*, C.C. Conn. 1810, Fed. Cas. No. 14,431.

Penalties and forfeitures incurred for offenses against Act Dec. 31, 1792, c. 1 (chapter 1 of this title) and against Act Feb. 18, 1793, c. 8 (this chapter) might be sued for, recovered, and disposed of in the manner provided in the duty act passed on Aug. 4, 1790, c. 35 (incorporated in part in former sections 732, 736, and 751 to 754 of Title 28) notwithstanding its repeal. 1830, 2 Op. Atty. Gen. 392.

§ 329. Fees

The following fees shall be levied and collected from the owners and masters of all vessels except those navigating the waters of the northern, northeastern, and northwestern frontiers, otherwise than by sea:

For granting a permit for a vessel not belonging to a citizen or citizens of the United States, to proceed from district to district, and receiving the manifest, \$2.

For receiving a manifest, and granting a permit, to unload, for such last-mentioned vessel, on her arrival in one district from another district, \$2. R.S. § 4381; June 19, 1886, c. 421, § 1, 24 Stat. 79.

Historical Note

Derivation. Acts Feb. 18, 1793, c. 8, § 34, 1 Stat. 316; July 1, 1870, c. 185, § 7, 16 Stat. 177.

Codification. Prior to its incorporation into the Code, R.S. § 4381 read as follows:

"The following fees shall be levied and collected from the owners and masters of all vessels except those navigating the waters of the northern, northeastern, and northwestern frontiers, otherwise than by sea:

"First. For measuring every vessel, in order to the enrollment or licensing and recording the same, the fees prescribed for like services in order to the registry of vessels.

"Second. For every certificate of enrollment, fifty cents.

"Third. For every indorsement on a certificate of enrollment, twenty cents.

"Fourth. For every license, and granting the same, including the bond, if not exceeding twenty tons, twenty-five cents; if above twenty and not more than one hundred tons, fifty cents; and if more than one hundred tons, one dollar.

"Fifth. For every indorsement on a license, twenty cents.

"Sixth. For certifying manifests, and granting a permit for a licensed vessel to proceed from district to district, ten cents.

"Seventh. For receiving a certified manifest and granting a permit on the arrival of such licensed vessel, ten cents.

"Eighth. For certifying manifests, and granting a permit for a registered vessel to proceed from district to district, one dollar and fifty cents.

"Ninth. For receiving a certified manifest, and granting a permit on the arrival of such registered vessel, one dollar.

"Tenth. For granting a permit for a vessel not belonging to a citizen or citizens of the United States, to proceed from district to district, and receiving the manifest, two dollars.

"Eleventh. For receiving a manifest, and granting a permit, to unload, for such last-mentioned vessel, on her arrival in one district from another district, two dollars.

"Twelfth. For granting a permit for a vessel carrying on the fishery to trade at a foreign port, twenty-five cents, and for the report and entry of any foreign goods imported in such vessel, twenty-five cents.

"Where a surveyor certifies a manifest, or grants a permit, or receives a certified manifest and grants a permit, the fees arising therefrom shall be received by him solely for his use; and all other fees arising by virtue of this section shall be received and accounted for by the collector, or, at his option, by the naval officer, where there is one, and where there is a collector, naval officer, and surveyor, shall be equally divided monthly between the said officers; and where there is no naval officer, two-thirds to the collector and the other third to the surveyor; and where there is only a collector, he shall receive the whole amount thereof; and where there is more than one surveyor in any district, each of them shall receive his proportional part of such fees as shall arise at the port for which he is appointed; and in all cases where the tonnage of any ship or vessel shall be ascertained by any person appointed for that purpose, such person shall be paid a reasonable compensation therefor out of the fees aforesaid, before any distribution thereof as aforesaid."

All of the numbered paragraphs, except the tenth and eleventh, were omitted as superseded by Act June 19, 1886, which is incorporated in section 331 of this title.

The last paragraph was superseded by the reorganization of the customs service by the President under Act Aug. 24, 1912, c. 355, § 1, 37 Stat. 434 (former section 1 of Title 19, Customs Duties).

Cross References

Canal boats or boats employed on internal waters or canals of any state, exemption from requirements of this section, see section 336 of this title.

Collectors of customs, fees, see section 58 of Title 19, Customs Duties.

Notes of Decisions

1. Distribution

In view of the absence of anything indicative of an intent to change the purpose for which the fees enumerated were originally established, or to introduce a new rule of distribution, notwithstanding the revisal omitted the

provision of the Act of 1793 (incorporated in this chapter) regulating the distribution of such fees, they should be distributed, as they had heretofore been, under the rule prescribed by that act. 1875, 15 Op. Atty. Gen. 44.

§ 330. Fees on frontiers

The following fees shall be levied and collected from the owners and masters of vessels navigating the waters of the northern, north-eastern, and northwestern frontiers of the United States, otherwise than by sea:

For certifying manifest, including master's oath, and granting permit for vessel to go from district to district, 10 cents.

For receiving manifest, including master's oath, on arrival of a vessel from one collection district to another, whether touching at foreign, intermediate ports or not, 10 cents.

For a post entry of such vessel, \$2. R.S. § 4382; July 5, 1884, c. 228, §§ 2, 3, 23 Stat. 132, 133; June 19, 1886, c. 421, § 1, 24 Stat. 79; Mar. 3, 1897, c. 389, § 9, 29 Stat. 689.

Historical Note

Derivation. Act July 1, 1870, c. 185, § 7, 16 Stat. 177; Res. Feb. 10, 1871, No. 27, § 2, 16 Stat. 595.

Codification. Prior to its incorporation into the code, R.S. § 4382 was as follows:

"The following fees shall be levied and collected from the owners and masters of vessels navigating the waters of the northern, northeastern, and northwestern frontiers of the United States, otherwise than by sea:

"First. For the measurement of any vessel, the fees prescribed in Title XLVIII, 'Regulation of Commerce and Navigation.'

"Second. For certificate of enrollment, including bond and oath, one dollar and ten cents.

"Third. For granting license, including bond and oath, if not over twenty tons, forty-five cents.

"Fourth. For granting license, including bond and oath, above twenty

and not over one hundred tons, seventy cents.

"Fifth. For granting license, including bond and oath, above one hundred tons, one dollar and twenty cents.

"Sixth. For certifying manifest, including master's oath, and granting permit for vessel to go from district to district, ten cents.

"Seventh. [Repealed.]

"Eighth. For receiving manifest, including master's oath, on arrival of a vessel from one collection district to another, whether touching at foreign, intermediate ports or not, ten cents.

"Ninth. [Repealed.]

"Tenth. For certifying a manifest, including master's oath, and granting permit to a vessel under fifty tons, laden with a cargo destined for a port or place in another district at which there is no custom-house, twenty-five cents.

"Eleventh. For certifying a manifest, including master's oath, and granting permit to a vessel above fifty tons, laden with a cargo destined for a port or place

in another district at which there is no custom-house, fifty cents.

"Twelfth. [Repealed.]

"Thirteenth. [Repealed.]

"Fourteenth. Vessels departing to or arriving from a port in one district to or from a port in an adjoining district, and touching at intermediate foreign ports, are exempted from the payment of the entry fees.

"Fifteenth. For a port entry of such vessel, two dollars.

"Sixteenth. For permit to land or deliver goods, twenty cents.

"Seventeenth. For a bond taken officially, not otherwise provided for, fifty cents.

"Eighteenth. For permit to load goods for exportation entitled to drawback, thirty cents.

"Nineteenth. For debenture or other official certificate not otherwise provided for, twenty cents.

"Twentieth. For recording all bills of sale, mortgages, hypothecations, or conveyances of vessels, fifty cents.

"Twenty-first. For recording all certificates for discharging and canceling any such conveyances, fifty cents.

"Twenty-second. For furnishing a certificate setting forth the names of the owners of any registered or enrolled vessel, the parts or proportions owned by each, and also the material facts of any existing bill of sale, mortgage, hypothecation, or other incumbrance; the date, amount of such incumbrance, and from and to whom made, one dollar.

"Twenty-third. For furnishing copies of such records for each bill of sale, mortgage, or other conveyance, fifty cents.

"Twenty-fourth. For receiving manifest of each railroad car or other vehicle laden with goods, wares, or merchandise from a foreign contiguous territory, twenty-five cents.

"Twenty-fifth. For entry of goods, wares, or merchandise for consumption, warehouse, rewarehouse, transportation,

or exportation, including oath and permit to land or deliver, fifty cents.

"Twenty-sixth. For certificate of registry including bond and oath, two dollars and twenty-five cents.

"Twenty-seventh. For indorsement of change of masters on registry, one dollar."

Act July 5, 1884, §§ 2, 3, amended the sixth and eighth paragraphs by striking out the words "under fifty tons twenty-five cents," and inserting in lieu thereof the words "ten cents"; also by striking out all of the seventh and ninth paragraphs, which read, respectively, as follows: "For certifying manifest, including master's oath, and granting permit for vessel to go from district to district, over fifty tons, fifty cents;" and "For receiving manifest, including master's oath, on arrival of a vessel from one collection district to another, whether touching at foreign intermediate ports or not, over fifty tons, fifty cents."

Act Mar. 3, 1897, amended the section by abolishing the fees provided for by the twelfth and thirteenth paragraphs, which provided, respectively, as follows: "For the entry of a vessel direct from a foreign port, fifty cents;" and "For the clearance of a vessel direct to a foreign port, fifty cents."

Many of the provisions of the original text, as well as a provision of Act Mar. 3, 1897, § 9, concerning the compensation of collectors of customs whose compensation consisted in whole or in part of the fees thereby abolished, were superseded by Act June 19, 1886, which is incorporated in section 331 of this title.

In the original the words "post entry" in the last paragraph of this section read "port entry". It was changed to read "post" in view of an opinion of the (former) Commissioner of Navigation.

The fourteenth paragraph of the original text was omitted as covered by section 111 of this title.

Notes of Decisions

Refund of fees 2

Vessels subject to section 1

1. Vessels subject to section

Ships navigating between ports on Puget Sound and ports on eastern and southern shores of Vancouver Island and Western Shore of the British Columbia mainland traverse the "sea" and were not exempted from payment of entrance and clearance fees by this section. *Border Line Transp. Co. v. Elias, C.C.A.*

Wash.1942, 128 F.2d 192, certiorari denied 63 S.Ct. 662, 318 U.S. 763, 87 L.Ed. 1134.

2. Refund of fees

The right to a refund of entrance and clearance fees improperly exacted by the collector of customs at Pembina, N. D., from Canadian vessels entering and clearing that port after the passage of Act Mar. 3, 1897 (see historical note) was governed by section 8 of this title. 1905, 25 Op. Atty. Gen. 376.

§ 331. Certain fees abolished

No fees shall be charged or collected by collectors or other officers of customs, or by Coast Guard officials, for the following services to vessels of the United States, to wit: Measurement of tonnage and certifying the same, except that the compensation and necessary travel and subsistence expenses of the officers so measuring or certifying such vessels at the request of the owners thereof at a place other than a port of entry or a customs station shall be paid by such owners; issuing of license or granting of certificate of registry, record, or enrollment, including all indorsements on the same and oath; indorsement of change of master; certifying and receiving manifest, including master's oath and permit; granting permit to vessels licensed for the fisheries to touch and trade; granting certificate of payment of tonnage dues; recording bill of sale, mortgage, hypothecation or conveyance, or the discharge of such mortgage or hypothecation; furnishing certificate of title; furnishing the crew list; certificate of protection to seamen; bill of health; shipping or discharging of seamen, as provided by title 53 of the Revised Statutes and sections 563 and 646 of this title; apprenticing boys to the merchant service; inspecting, examining, and licensing steam vessels, including inspection certificate and copies thereof; and licensing of master, engineer, pilot, or mate of a vessel. June 19, 1886, c. 421, § 1, 24 Stat. 79; Apr. 4, 1888, c. 61, § 2, 25 Stat. 80; June 25, 1938, 5 p. m., E. S. T., c. 679, § 19(a), 52 Stat. 1087; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

References in Text. For distribution of title 53, sections 4501-4612, of the Revised Statutes, see note under section 543 of this title.

Codification. This is from the Shipping Act of June 19, 1886, § 1, as amended by Act Apr. 4, 1888.

Prior to its incorporation into the Code, the section contained the following additional provisions: "And all provisions of laws authorizing or requiring the collection of fees for such services are repealed, such repeal to take effect July first, eighteen hundred and eighty-six. Collectors or other officers of customs, inspectors of steam vessels, and shipping commissioners who are paid wholly or partly by fees shall make a detailed report of such services, and the fees provided by law, to the Secretary of the Treasury, under such regulations as that officer may prescribe; and the Secretary of the Treasury shall allow and pay, from any money in the Treasury not otherwise appropriated, said officers such compensation for said services as each would have received prior to the

passage of this act; also such compensation to clerks of shipping commissioners and clerks of steamboat inspectors, and such allowances for fees of United States marshals and witnesses for services under the steamboat inspection laws, and for expenses of steamboat inspectors provided for by section forty-four hundred and sixty-one of the Revised Statutes as would have been paid them had this act not passed: Provided, That such services have, in the opinion of the Secretary of the Treasury, been necessarily rendered."

The amendment by Act Apr. 4, 1888, inserted in the last sentence, after the words "clerks of shipping commissioners," the provisions beginning with the words "and clerks of steamboat inspectors," and ending with the words "of the Revised Statutes."

These provisions were, in part superseded by the reorganization of the customs service under Act Aug. 24, 1912, c. 355, § 1, 37 Stat. 494 (former section 1 of Title 19); in part by Act June 25, 1919, c. 384, § 7, 36 Stat. 773, repealing

so much of the Act of 1886 as made a permanent indefinite appropriation to pay compensation to shipping commissioners and their clerks, and requiring estimates therefor to be submitted annually; and in part by subsequent acts making appropriations for the steamboat inspection service and shipping commissioners. See Act Feb. 24, 1927, c. 189, 44 Stat. 1205, 1206.

The following provisions were omitted from the Code as superseded by this section: R.S. § 4185, as to fees of collectors for each certificate of registry or record, for each indorsement, and for taking any bond required by that title; R.S. § 4186, as to fees of surveyors for the admeasurement of vessels, etc., and other services to be performed on board vessels; R.S. § 4458, as amended by Act Apr. 5, 1882, c. 67, 22 Stat. 40, as to sums to be demanded and received by the collector or other chief officer of the customs before issuing any license to any steamer, as compensation for the inspections and examinations made for the year; and the fees to be paid by each master, engineer, pilot, and mate, licensed as therein provided; and Act June 26, 1884, c. 121, § 28, 23 Stat. 59, dealing, in part, with the same matters; R.S. §§ 4592, and 4593, as to fees upon engagements and discharges and apprenticeships effected before shipping commissioners; a provision of Act Aug. 5, 1882, c. 398, § 3, 22 Stat. 301, authorizing the Secretary of the Treasury to establish and promulgate a scale of fees for readmeasurement of spaces to be deducted from the gross tonnage of a vessel. A provision of Act Mar. 4, 1907, c. 2918, § 1, 34 Stat. 1315, that all payments to collectors or other officers of the customs on account of fees theretofore paid from the permanent indefinite appropriation provided for by section 1 of the Act of 1886, should be

paid from the appropriation "Expense of collecting the revenue from customs" was superseded by the reorganization of the customs service mentioned above.

1938 Amendment. Act June 25, 1938 amended section to require owners of vessels to pay compensation and travel and subsistence expenses of officers measuring or certifying vessels at request of owners at a place other than a port of entry or customs station.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

"Coast Guard officials" was substituted for "inspectors of steam vessels or shipping commissioners" on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Cross References

Fees for bill of sale, conveyance or mortgage recorded, or certificate or certified copy furnished, see section 927 of this title.

Notes of Decisions

Coast Guard officials, fees of 4
 Repeals 1
 R.S. § 4186 2
 R.S. § 4592 3

1. Repeals

This section did not repeal the provisions of Act June 26, 1884, c. 126, § 27, 23 Stat. 59, amending R.S. § 4501 (former section 541 of this title), as respects pay-

ment of expenditures by shipping commissioners other than for clerks. U. S. v. Reed, N.Y.1897, 17 S.Ct. 919, 167 U.S. 664, 42 L.Ed. 317.

Where complaint seeking to recover fees paid to collector of customs for surveyors' services stated only that fees were for services other than admeasurement of vessels, and R.S. § 4186 authorizing collection of fees for surveyors' services was repealed in part by abolishing certain of fees, Court of Appeals

would assume fees involved were not fees which had been abolished. *Carriso, Inc., v. U. S.*, C.C.A.Cal.1939, 106 F.2d 707.

Section 4(s) of Act Oct. 3, 1913, 38 Stat. 114, 201, reorganizing custom service modified statute providing for payment of fees for entrance and clearance of vessels to collector only to extent of requiring fees to be covered into treasury instead of being retained by collectors, and did not abolish any fees, and in no way affected provisions of R.S. former § 4186 for payment by ship owner of surveyors' fees. *Id.*

This section providing that all fees upon goods passing through customs for importation or exportation exacted by customs officers shall be abolished except as provided by such Act, refers only to fees exacted upon entries of "goods," and does not repeal provision of R.S. § 2654, providing for payments of fees by ship owners for entrance and clearance of vessel, or provision for surveyors' fees. *Id.*

This section did not affect section 626 of this title, authorizing the District Court to allow former shipping commissioners expenses incurred for turning over money, wages, and effects of deceased seamen. *U. S. v. Grant*, D.C.Mass. 1914, 224 F. 644.

2. R.S. § 4186

R.S. § 4186 applied as well to vessels which had not been previously registered as to those to which registers had been previously granted. *The Neptune*, La. 1818, 16 U.S. 601, 3 Wheat. 601, 4 L.Ed. 469.

3. R.S. § 4592

Where defendant asked plaintiff to procure him four sailors, and plaintiff, who was unable to furnish the men, agreed "as a favor" to wire to a firm of general ship brokers at another point who, in reply, offered to furnish them at a rate in excess of that allowed to shipping commissioners for enlisting seamen, by this section and defendant, after reading the offer, asked plaintiff to procure the men and advance the money, stating that he would reimburse him, the payment of the money by plaintiff was not a violation of R.S. § 4592, and he was entitled to recover it. *Moffitt v. Hammerland*, 1908, 60 S.E. 713, 147 N.C. 52.

4. Coast guard officials, fees of

Where under former provision of this section the commissioner was allowed and paid a salary of \$5,000, which

amount he would have earned under the former act, he could not be required to pay from such salary the rent and other expenses incident to the maintenance of his office, but such expenses were a proper charge against the United States. *U. S. v. Reed*, N.Y.1897, 17 S.Ct. 919, 167 U.S. 664, 42 L.Ed. 817.

A shipping commissioner could not recover from the government the amount paid by him for clerk hire after he was formally notified by the secretary that his compensation would be limited to a certain amount per month, where it appeared that upon the presentation of his vouchers containing the claim for clerk hire they were approved only to the amount so limited. *U. S. v. Gunnison*, Ct.Cl.1894, 15 S.Ct. 152, 155 U.S. 389, 39 L.Ed. 195.

A shipping commissioner was entitled to a fee for attending to the effects of a deceased seaman, since such service was not one of those for which the payment of a fee was prohibited by this section. *In re Nickerson*, D.C.Mass.1919, 260 F. 1020.

"The effect of this statute is to make the commissioner's compensation dependent on the services which he renders, and to put the payment for those services on the United States, instead of on individuals. The Commissioner is not entitled to be paid by the United States for services for which he would not, prior to the statute referred to, have been entitled to charge individuals.

"Under the law as it stood prior to the act of June 19, 1886 [incorporated in part in this section] it must be taken as established in this court that the commissioner was entitled to make a charge for expenses in accordance with Judge Shepley's order of 1873. The question then is whether the statute in question abolishes that charge. The language of the act is extremely precise:

"No fee shall be charged * * * for the following services, to wit."

"Attending to the effects of a deceased seaman was not among the services scheduled. The compensation substituted by the act in lieu of fees is based upon 'a detailed report of such services and the fees provided by law.' It seems clear that the commissioner, if he reported such a fee as is here claimed, could not be allowed for it out of the treasury under the statute. It was obviously not the intention of Congress to change by the statute the amount of compensation, but only the method of payment." *Id.*

§ 332. Exemptions of vessels not propelled by sail or internal motive power

The provisions of sections 251-255, 258, 259, 262-280, 293, 306-316, 318, 321-330, and 333-335 of this title shall not be so construed as to require the payment of any fee or charge for the enrolling or licensing of vessels, built in the United States and owned by citizens thereof, not propelled by sail or by internal motive power of their own, and not in any case carrying passengers, whether navigating the internal waters of a State or the navigable waters of the United States, and not engaged in trade with contiguous foreign territory, nor shall this or any law existing on June 30, 1879, be construed to require the enrolling, registering or licensing of any flatboat, barge or like craft for the carriage of freight, not propelled by sail or by internal motive power of its own, on the rivers or lakes of the United States. June 30, 1879, c. 54, 21 Stat. 44.

Notes of Decisions

1. Vessels within section

The provision in this section has reference solely to vessels of that description built within the United States and owned by citizens thereof and it does not extend to foreign-built craft. 1880, 16 Op. Atty. Gen. 563.

Vessels usually called canal boats, of more than five tons burden, trading from place to place in a district, or between different districts, on navigable waters of the United States (except such as

were provided with sails or propelling machinery of their own adapted to lake or coastwise navigation, and also such as were employed in trade with the Canadas), were exempt from license or enrollment as well where in the trade in which they were engaged they did not enter a canal of a state as where their voyages were partly on such navigable waters and partly on a state canal. 1875, 15 Op. Atty. Gen. 52.

§ 333. Posting table of fees

Every collector and such officer or employee as the Secretary of the Treasury shall designate shall cause to be affixed and constantly kept in some conspicuous place in his office a fair table of the rates of fees demandable by sections 251-255, 258, 259, 262-280, 293, 306-316, 318, 321-330, and 333-335 of this title. R.S. § 4383; June 17, 1930, c. 497, Title IV, §§ 523, 651(a) (1), 46 Stat. 740, 762; Aug. 8, 1953, c. 397, § 2(d), 67 Stat. 508.

Historical Note

Derivation. Act Feb. 18, 1793, c. 8, § 34, 1 Stat. 316.

Codification. Upon incorporation into the Code, the words "and every surveyor residing at a port where there is no collector" which followed the words "naval officer" in the original text, were omitted as superseded by the reorganization of the customs service under Act Aug. 24, 1912, c. 355, § 1, 37 Stat. 434.

Upon incorporation into the Code, the words "comptroller of customs" were substituted for "naval officer" to conform to Act Sept. 21, 1922, c. 356, § 523, 42 Stat. 974, which was repealed by section 651(a) (1) of Act June 17, 1930. Section 523 of said Act June 17, 1930, classified to section 1523 of Title 19, Customs Duties, continued naval officers of customs as comptrollers of customs. Said section 523 of said Act June 17, 1930, was

amended by Act Aug. 8, 1953, which omitted references to comptrollers of customs and substituted reference to the Secretary of the Treasury or such officer or employee as he shall designate.

The words "such officer or employee as the Secretary of the Treasury shall designate" were substituted for "comptrollers of customs" to reflect such change.

§ 334. Vessels liable for fees for enrollment

All vessels subject to enrollment or license shall be liable to the payment of the fees established by law for services of customs officers incident thereto. R.S. § 4384.

Historical Note

Derivation. Act July 18, 1866, c. 201, § 28, 14 Stat. 184.

§ 335. Lighters and boats

Nothing in sections 251-255, 258, 259, 262-280, 293, 306-316, 318, 321-330, and 333-335 of this title shall be construed to extend to any boat or lighter not being masted, or if masted and not decked, employed in the harbor of any town or city. R.S. § 4385.

Historical Note

Derivation. Act Feb. 18, 1793, c. 8, § 37, 1 Stat. 317.

Cross References

Vessels not propelled by sail or internal motive power and canal boats or boats employed on internal waters or canals of any State, exemption from requirements of this section, see sections 332 and 336 of this title.

§ 336. Canal boats exempt from enrollment, license, and customs fees

Sections 251, 252, 259, 262-269, 273-279, 307-315, 318, 321-329, 333, and 335 of this title shall not be so construed as to extend to canal boats or boats employed on the internal waters or canals of any State; and all such boats, excepting only such as are provided with sails or propelling machinery of their own adapted to lake or coastwise navigation, and excepting such as are employed in trade with the Canadas, shall be exempt from such provisions and from the payment of all customs and other fees under any Act of Congress. Apr. 18, 1874, c. 110, 18 Stat. 31.

Notes of Decisions

Generally 1
Location of waters 2
Use of vessel 3

1. Generally

Even prior to this Act by virtue of R.S. §§ 4311, 4371 (section 251 and

former section 317 of this title) a canal boat, barge, or flat boat without sails, oars, or other motive power of its own, towed through the canals by horses and in open waters by a steamer, without decks or accommodations for persons on board, was not a ship or vessel required to be enrolled and licensed. U. S. v. The Canal Boat Ohio, D.C.Pa.1872, 9

Phila., Pa., 448, 29 Leg.Int., Pa., 252, 27 Fed.Cas.No.15,915. See, also, U. S. v. The Pennsylvania Canal Boat Nos. 68 and 69, D.C.Md.1873, 30 Leg.Int., Pa., 249, 27 Fed.Cas.No.16,027.

2. Location of waters

The exemption from enrollment or license is not confined in its operation to waters within the interior of each state, but extends to any waters coming under the denomination of navigable waters of the United States, irrespective of their geographical location. 1875, 15 Op.Atty.Gen. 52.

This section does not contemplate boats employed exclusively on the "internal waters" of a state where the same are not also navigable waters of the United States, nor boats employed exclusively on the "canals of a state;" it contemplates boats which are employed on navigable waters of the United States as well as on the canal or internal waters of a state. Id.

3. Use of vessel

A small steamer whose route was wholly within the state, though engaged in interstate commerce, was not subject to inspection and license under the federal laws. The Daniel Ball, D.C.Mich., Fed.Cas.No.3,564. See, also, The Daniel Ball, 1871, 77 U.S. 557, 10 Wall. 557, 19 L.Ed. 999.

It is the use made of the vessel, not its mechanical structure, which determines whether it is or is not entitled to the exemption allowed by this section. 1879, 16 Op.Atty.Gen. 247.

This section did not exempt from the license required by former section 317 of this title, a vessel of more than five tons burden, answering to the description of a canal-boat, which was engaged in trade between different ports or districts on navigable waters of the United States, and which had never been used on a canal, was not intended to be used there, and did not in its present employment enter a canal. Id.

CHAPTER 13.—PASSPORTS AND PAPERS OF VESSELS ENGAGED IN FOREIGN COMMERCE

Sec.

351–353. Omitted.

354. Deposit of ship's papers with consul.

355. Penalty for failure.

§§ 351–353. Omitted.

Historical Note

Codification. Sections R.S. §§ 4306–4309, related to passports of United States vessels. The use of sea letters and passports was discontinued by Presidential proclamation on Apr. 10, 1815.

Notes of Decisions

1. **Vessels to which section applies** foreign voyages. *The Miranda*, D.C.N.Y. 1891, 47 F. 815, affirmed 51 F. 523, 2 C.C.A. 362.
- Former sections 351 and 353 of this title applied only to vessels bound on

§ 354. Deposit of ship's papers with consul

Every master of a vessel, belonging to citizens of the United States, who shall sail from any port of the United States, shall, on his arrival at a foreign port, deposit his register, with the consul or vice consul, if any there be at such port; and it shall be the duty of such consul or vice consul, on such master or commander producing to him a clearance from the proper officer of the port where his vessel may be, to deliver to the master all of his papers, if such master or commander has complied with the provisions of law relating to the discharge of seamen in a foreign country, and to the payment of the fees of consular officers. R.S. § 4309; Apr. 5, 1906, c. 1366, § 3, 34 Stat. 100.

Historical Note

Derivation. Act Feb. 28, 1803, c. 9, § 2, 2 Stat. 203.

Codification. The words "commercial agent, or vice-commercial agent" following vice-consul were omitted from the Code upon the abolition of the grade of commercial agent by Act Apr. 5, 1906.

Sea Letters and Passports, Use Discontinued. As originally enacted this section also required the deposit of sea letters and passports. The use of such documents was discontinued by Presidential proclamation on Apr. 10, 1815.

Cross References

Consular fees for services to American vessels or seamen prohibited, see section 1186 of Title 22, Foreign Relations and Intercourse.

Retention of papers of American vessels by consular officers until payment of demands and wages, see section 1185 of Title 22, Foreign Relations and Intercourse.

Notes of Decisions

Arrival 3

Construction with other laws 1

Fees of consuls 6

Foreign ports, vessels touching at several 4

Port without consul 5

Vessels subject to section 2

1. Construction with other laws

Act Aug. 5, 1861, c. 49, providing that American vessels running regularly by weekly or monthly trips should not be required to pay fees to consuls for more than four trips in a year, did not change or affect the duties of masters of American vessels running regularly by weekly or monthly trips, or otherwise, to or between foreign ports, as imposed by this section. 1864, 11 Op. Atty. Gen. 72.

2. Vessels subject to section

The masters of fishing vessels, enrolled but not registered, are not required to deposit their ships' papers with the United States Consul when they arrive at a foreign port where there is such a consular officer. 1895, 21 Op. Atty. Gen. 190.

This section applies to American steam ferryboats running between Detroit and Windsor, Canada West. 1865, 11 Op. Atty. Gen. 237.

The master of an American vessel sailing to or between ports in the British North American provinces is required, on arriving at any such port, to deposit his ship's papers with the American consul. 1864, 11 Op. Atty. Gen. 72.

3. Arrival

Where a vessel came to anchor about a quarter of a mile from town, but did not come to an entry nor discharge any cargo, nor any passengers or cargo, nor do any business except to communicate with the consignees, the master was not liable for failing to deliver the ship's papers to the consul, since the "arrival" spoken of means an arrival for purposes of business requiring an entry and clearance, and a stay at port so long as to require some of the acts connected with business, and not merely touching at a port for advices, or to ascertain the state of the market, or being driven in by an adverse wind and sailing again as soon as it changes. *Harrison v. Vose*, Me. 1850, 50 U.S. 372, 9 How. 372, 13 L.Ed. 179.

The term "arrival," as used in this section, means arrival at a voluntary port of destination for the purpose of trade. C.A. 350.

The *Javirena*, Fla. 1895, 67 F. 152, 14 C.

This section applies to an arrival at a foreign port from another foreign port. *Gould v. Staples*, C.C.Me. 1881, 9 F. 159.

Any voluntary arrival in a foreign port in the course of the voyage, although for advices only, is within this section. *Parsons v. Hunter*, C.C.N.H. 1836, Fed. Cas. No. 10,778.

The master of a vessel merely touching at a port without coming to an entry or transacting any business, need not deposit the ship's papers with the consul. *Toler v. White*, D.C.Me. 1834, Fed. Cas. No. 14,079.

If an American vessel is obliged by the law or usage prevailing at a foreign port to effect an entry, and she does enter conformably to the local law or usage, her coming to such foreign port amounts to an "arrival" within the meaning of this section independently of any ulterior destination of the vessel, or the time she may remain, or intend to remain, at such port, or the particular business she may transact there. 1864, 11 Op. Atty. Gen. 72. See, also, 1865, 11 Op. Atty. Gen. 237.

The commander of an American vessel is required to deliver his register and other ship's papers to the consul at a foreign port only in cases where he is compelled to make an entry at the custom house. 1853, 9 Op. Atty. Gen. 256.

In order that the master of a ship, on her "arrival" in a foreign port, shall be compellable to deposit the ship's papers with the consul, the arrival must be such an one as involves entry and clearance. 1853, 6 Op. Atty. Gen. 163.

Masters of American vessels entering foreign ports where there is an American consul, and remaining so long as that, by the local regulations, they are required to enter and clear, are subject to this section, irrespective of the purpose for which the port shall have been entered. 1849, 5 Op. Atty. Gen. 161.

This section does not require the papers of an American vessel in a foreign port to be delivered to the consul, except in cases where it is necessary to make an entry at the custom house. 1845, 4 Op. Atty. Gen. 390.

4. Foreign ports, vessels touching at several

The master is required to deposit the ship's papers not only with the consul at the first port of arrival, but at every other foreign port to which he may subsequently proceed. *Gould v. Staples*, C.C. Me.1881, 9 F. 159.

5. Port without consul

Where defendant arrived at Hieres from Genoa with his vessel for the purpose of taking on cargo and Hieres is about twenty miles from Toulon, and there was evidence that in order to make the trip to that point from where the

vessel was anchored it would require the master to be gone over night, it was not such a reasonable distance under the circumstances as would make the master liable for penalty for failure to deposit the ship's papers with the consular agent at Toulon. *Gould v. Staples*, C.C.Me. 1881, 9 F. 159.

6. Fees of consuls

The fees receivable by a consul for receiving and delivering a vessel's register and other papers were prescribed by regulation of the President. 1864, 11 Op. Atty.Gen. 72.

§ 355. Penalty for failure

Every master of any such vessel who refuses or neglects to deposit the papers as required by section 354 of this title, shall be liable to a penalty of \$500, to be recovered by such consul or vice consul, in his own name, for the benefit of the United States, in any court of competent jurisdiction. R.S. § 4310; Apr. 5, 1906, c. 1366, § 3, 34 Stat. 100.

Historical Note

Derivation. Act Feb. 23, 1803, c. 9, § 2, 2 Stat. 203.

Codification. The words "commercial agent, or vice-commercial agent" follow-

ing vice-consul were omitted from the Code upon the abolition of the grade of commercial agent by Act Apr. 5, 1906.

Notes of Decisions

Burden of proof 3

Evidence 4

Limitations 2

Remedy, form 1

1. Remedy, form

An action of debt in the name of the consul was the proper remedy. *Parsons v. Hunter*, C.C.N.H.1836, Fed.Cas.No.10,778.

Masters of American vessels are subject to prosecution in the name of the consul for omission to deposit with him the papers according to law, but not to indictment. 1855, 7 Op.Atty.Gen. 395.

2. Limitations

The penalty had to be sued for within two years. *Parsons v. Hunter*, C.C.N.H. 1836, Fed.Cas.No.10,778.

3. Burden of proof

A plaintiff suing for the penalty imposed by this section has the burden of establishing the case after resolving all reasonable doubts as to the meaning of this section in favor of defendant. *Harrison v. Vose*, Me.1850, 50 U.S. 372, 9 How. 372, 13 L.Ed. 179.

4. Evidence

The certificate of a consul was not admissible to prove the arrival or departure of a vessel on an information for a penalty for failure to deposit the ship's register on arrival in the port. *Levy v. Burley*, C.C.Mass.1836, Fed.Cas. No.8,300.

CHAPTER 14.—INSPECTION OF STEAM VESSELS**VESSELS SUBJECT TO INSPECTION AND REGULATION**

Sec.

- 361. What are steam vessels.
- 362. Domestic and foreign vessels; laws applicable; reciprocal acceptance of foreign certificates of inspection; fees.
- 363. Department of Commerce vessels.
- 364. Vessels navigating coastwise and on Great Lakes.
- 365. Vessels navigating Irondequoit Bay.
- 366. Foreign vessels admitted to registry.
- 367. Seagoing vessels propelled by internal-combustion engines.

PLANS AND SPECIFICATIONS FOR CONSTRUCTION OR ALTERATION OF PASSENGER VESSELS

- 369. Examination and approval by Commandant of the Coast Guard.
 - (a) Technical staff; qualifications and appointment; duty to pass on plans and specifications; notice of disapproval.
 - (b) Approval condition precedent to certificate of inspection; alterations in plans after approval; by American Bureau of Shipping.
 - (c) Endorsement of approval on plans; departure from plans; refusal to issue certificate; making alterations before approval of modified plans; penalty.
 - (d) Matters included in term "plans and specifications"; specification for fire-retardant material.
 - (e) Defacing or destruction of plans; penalty.
 - (f) Effective date of section.

APPOINTMENT, QUALIFICATIONS, DUTIES, AND SALARIES OF INSPECTORS AND OTHER OFFICERS

- 371. Repealed.
- 372. Administration of inspection laws.
- 373-374a. Omitted.
- 375. Regulations of the Commandant.
- 376-380. Omitted.
- 381. Regulations as to passing steamers.
- 382 to 382a—1. Omitted.
- 382b. Extra pay for overtime services; payment by owner or master or agent; appropriations; regulation of varying working hours.
- 382c-385. Omitted.

SMALL PASSENGER-CARRYING VESSELS

Sec.

390. Definitions.

390a. Inspection.

(a) Frequency and requirements.

(b) Fees for inspection and certificate, license, or permit.

390b. Rules and regulations.

390c. Certificate of inspection.

(a) Issuance prerequisite to operation; exception.

(b) Compliance.

(c) Surrender; withdrawal for noncompliance.

390d. Violations; penalty; liability; jurisdiction.

390e. International Convention requirements unaffected.

390f. Appropriation.

390g. Separability of provisions.

MODE, MANNER, AND EXTENT OF INSPECTION;
CERTIFICATES; RECORDS

391. Hulls and equipment.

(a) Steam vessels carrying passengers; annual inspection.

(b) Steam vessels not carrying passengers; biennial inspection.

(c) Sail vessels over 700 tons or other vessels and barges over 100 tons carrying passengers; annual inspection.

(d) Requirements and enforcement; appeals.

(e) Exemptions.

391a. Vessels having on board inflammable or combustible liquid cargo in bulk.

(1) Vessels included.

(2) Rules and regulations for handling liquid cargo.

(3) Hearing before approval of rules.

(4) Certificate of inspection and permit required; time of indorsing permit; inspection; duration of permit; vessels of foreign nations; permit for prohibited materials.

(5) Shipping documents required on board; contents.

(6) Number of officers and tankermen; certificate as tanker-man; suspension or revocation of certificate.

(7) Penalties.

(8) Effective date of rules and regulations.

391b. Issuance of certain certificates by inspectors and assistants.

392. Boilers, unfired pressure vessels, and appurtenances; machinery and electrical equipment.

(a) Passenger vessels; annual inspection.

(b) Vessels other than passenger vessels; biennial inspection.

(c) Examination for conformity.

(d) Hydrostatic tests.

Sec.

- 393. Control of safety valves and steam gauges.
- 394. Amount of steam pressure allowed freight boats on Mississippi.
- 395. Seagoing barges; hulls and equipment.
 - (a) Annual inspection of barges over 100 tons carrying passengers.
 - (b) Biennial inspection of barges over 100 tons not carrying passengers.
 - (c) Certificate of inspection.
- 396. Equipment of barges with life-saving appliances.
- 397. Certificate of inspection and equipment of barge required.
- 398. Navigating barge without certificate or equipment prescribed.
- 399. Certificate; temporary certificate; completion of voyage after expiration.
- 400. Placing of certificate for observation by passengers.
- 401. Repealed.
- 402. Penalty for receiving passengers in absence of unexpired certificate of approval.
- 403. Punishment for certifying falsely.
- 404. Inspection of ferryboats, canal boats, and small craft; regulations.
- 405. Tugboats and freight boats.
- 406. Construction of boilers and unfired pressure vessels.
- 407. Punishment for improper construction.
- 408. Boiler plates.
- 409. Stamping boiler plates.
- 410. Counterfeiting stamps.
- 411. Pressure of steam allowable.
- 412. Thickness of boiler plate.
- 413. Obstructing safety valves.
- 414. Records and reports of inspections and licenses.
- 415. Instruments, stationery, and printing for supervising inspectors and local boards.
- 416. Regulations.
- 417-419. Omitted.

PROCEDURE; DECISIONS AND REVIEW THEREOF

- 431-434. Omitted.
- 435. Reinspections and notice for repairs; enforcement of requirements.
- 436. Penalty for failure to make repairs on notice.
- 437-440. Omitted.

Cross References

Unauthorized fees for inspection of vessels, punishment for receiving, see section 1912 of Title 18, Crimes and Criminal Procedure.

VESSELS SUBJECT TO INSPECTION AND REGULATION

§ 361. What are steam vessels

Every vessel subject to inspection propelled in whole or in part by steam or by any other form of mechanical or electrical power shall be considered a steam vessel within the meaning of and subject to all the provisions of this Act. *Provided, however,* That motor boats as defined in the Act of June 9, 1910, are exempt from the provisions of this Act. R.S. § 4399; June 13, 1933, c. 61, 48 Stat. 125.

Historical Note

Derivation. Act Feb. 28, 1871, c. 100, § 1, 16 Stat. 440.

References in Text. Phrase "this Act" is so in Statutes at Large. In R.S. 4399, as originally enacted, a similar reference read "this Title" meaning title LII of the Revised Statutes, but Act June 13, 1933, amended R.S. § 4399 to read "this Act" which in the Revised Statutes is

ambiguous. Reference to said Act of June 13, 1933, might have been intended. It was incorporated in this code as this section and sections 392 and 406-412 of this title.

Act June 9, 1910, c. 208, 36 Stat. 462, referred to in this section, was repealed by Act Apr. 25, 1940, c. 155, § 19, 54 Stat. 167.

Cross References

Inspection of vessels—

Having inflammable or combustible liquid cargo in bulk, see section 391a of this title.

Navigating waters of Canal Zone, see sections 151-159 of Title 2 of the Canal Zone Code.

Motorboats exempted from this section, see section 526q of this title.

Notes of Decisions

Construction 1

Purpose 2

1. Construction

The phrase "this Act" within meaning of amendment to this section, providing that every vessel subject to inspection, propelled in whole, or in part by steam or any form of mechanical or electrical power, shall be considered a steam vessel within meaning of and subject to all provisions of "this Act", was intended to mean all of the provisions of this chapter dealing with inspection of steam vessels. *Ace Waterways v. Fleming*, D.C.N.Y.1961, 98 F.Supp. 666.

Since this section was intended to protect the safety of life and property and to minimize disaster at sea, this section should receive a liberal construction in the public interest. *Id.*

This section, as amended in 1933, is ambiguous and leaves laws relating to regulation of mechanically propelled vessels in a state of uncertainty, and clarifying legislation would seem desirable. 1936, 38 Op.Atty.Gen. 441.

Pending the enactment of clarifying legislation, present practice should be continued—attributing to the amendment of 1933, the effect of extending to vessels not previously included in this section only those provisions of regulations contained in sections 392 and 406-412 of this title. *Id.*

2. Purpose

The purpose of this chapter is largely to protect life and property. *Ace Waterways v. Fleming*, D.C.N.Y.1961, 98 F.Supp. 666.

§ 362. Domestic and foreign vessels; laws applicable; reciprocal acceptance of foreign certificates of inspection; fees

All steam vessels navigating any waters of the United States which are common highways of commerce or open to general or competitive navigation, excepting public vessels of the United States, vessels of other countries, and boats propelled in whole or in part by steam for navigating canals, shall be subject to the provisions of title 52 of the Revised Statutes.

And all foreign private steam vessels carrying passengers from any port of the United States to any other place or country shall be subject to the provisions of sections 170, 391, 392, 399, 400, 402, 464, 472, 475, 481, 494, 495, 497, and 498 of this title, and shall be liable to visitation and inspection by the proper officer, in any of the ports of the United States, respecting any of the provisions of the sections aforesaid: *Provided, however,* That when such foreign passenger steamers belong to countries having inspection laws approximating those of the United States, and have unexpired certificates of inspection issued by the proper authorities in the respective countries to which they belong, they shall be subject to no other inspection than necessary to satisfy the Coast Guard that the condition of the vessel, her boilers, and life-saving equipments are as stated in the current certificate of inspection; but no such certificate of inspection shall be accepted as evidence of lawful inspection except when presented by steam vessels of other countries which have by their laws accorded to the steam vessels of the United States visiting such countries the same privilege accorded to the steam vessels of such countries visiting the United States; it being further provided that there shall be collected and paid into the Treasury of the United States the same fees for the inspection of foreign passenger steamers carrying passengers from the United States that any foreign nation shall charge the merchant vessels of the United States trading to the ports of such nationality; it being further provided that the Commandant of the Coast Guard shall have the power to waive at any time the collection of such fees upon due notice of the proper authorities of any country concerned that the collection of fees for the inspection of American steam merchant vessels has been discontinued.

It is further provided that the Commandant of the Coast Guard may, in his discretion, permit any foreign passenger steamer coming within the provisions of this section whose foreign certificate of inspection shall have expired at sea since last leaving the country to which said vessel belongs, or while said vessel shall have been in a port of the United States, to sail upon her regular route without undergoing any further inspection than would have been required had said foreign certificate of inspection been in force: *Provided, however,* That such discretion shall be exercised only with respect of vessels operated upon regularly established lines, and in cases

where such foreign passenger steamers will be regularly inspected by the authorities of her home government before her next return to a port of the United States. R.S. § 4400; Aug. 7, 1882, c. 441, § 1, 22 Stat. 346; Mar. 1, 1895, c. 146, § 1, 28 Stat. 699; Feb. 15, 1902, c. 23, 32 Stat. 34; Mar. 17, 1906, c. 955, § 1, 34 Stat. 68; Mar. 4, 1913, c. 141, § 1, 37 Stat. 736; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Derivation. Act Feb. 28, 1871, c. 100, § 41, 16 Stat. 453.

References in Text. For distribution of title 52, sections 4390-4500, of the Revised Statutes, of which this section is a part, and referred to in the text, see note under section 170 of this title.

Codification. The section, as enacted in the Revised Statutes, contained only the first paragraph of the section as set forth here. It was first amended by Act Aug. 7, 1882, by adding the part of the second paragraph, as set forth here, down to the first proviso, together with a proviso as follows: "Provided, That where the term 'local inspection' is used in the foregoing section it shall be construed to mean the special inspection hereinafter provided for."

The section was further amended by Act Mar. 1, 1895, by striking out the proviso added by said Act Aug. 7, 1882.

The section was again amended by Act Feb. 15, 1902, by adding the first proviso as set forth here.

The section was again amended by Act Mar. 17, 1906, principally by the addition of the last proviso, so as to read as set forth here.

As last amended the clause preceding the first proviso, read "in any of the ports or the United States," instead of "of the United States," as before such amendment. The word "or" was obviously a mistake.

Upon incorporation into the Code the words "Secretary of Commerce" were substituted for "Secretary of Commerce

and Labor" in the second and third paragraphs to conform to Act Mar. 4, 1913, which provided that the Secretary of Commerce and Labor should be called the Secretary of Commerce.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

"Coast Guard" was substituted for "local inspectors" and "Commandant of the Coast Guard" for "Secretary of Commerce" on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Cross References

Irondequoit Bay, New York, for purpose of applying provisions of this chapter, made navigable water of United States, see section 365 of this title.

Notes of Decisions

Bays as navigable waters 2
Certificate of inspection 15
Commerce within state 5
Exempt vessels generally 4

Ferryboats 6
Foreign vessels 7
Government boats 8
Merchandise vessels 9

Navigable water of United States 1-3
 Generally 1
 Bays 2
 Rivers 3
 Navigation between Panama and San Francisco 14
 Neglect of inspectors 16
 Private use by owner 10
 Rivers as navigable waters
 State vessels 11
 Vessels beyond jurisdiction 12
 Yachts 13

1. Navigable water of United States— Generally

Navigable water of the United States distinguished from navigable water of a state. *U. S. v. The Montello*, Wis.1871, 78 U.S. 411, 11 Wall. 411, 20 L.Ed. 191.

All vessels carrying passengers within the jurisdiction of the United States are subject to regulations prescribed by Congress, even if the waters navigated are entirely within a state. *The Scow No. 1*, D.C.N.Y.1909, 169 F. 717.

2. — Bays

The waters of Jamaica Bay, New York, are public navigable waters of the United States, and such waters are under the direct control of Congress in the exercise of the constitutional power to regulate interstate and foreign commerce. *The Hazel Kirke*, D.C. and C.C.N.Y.1885, 25 F. 601.

3. — Rivers

A river can only be deemed a navigable water of the United States when it forms by itself or by its connection with other waters a continued highway for commerce. *U. S. v. The Montello*, Wis.1871, 78 U.S. 411, 11 Wall. 411, 20 L.Ed. 191.

Rivers are public navigable rivers in law which are navigable in fact, and they are navigable in fact when they are used, or can be used in their ordinary condition, as highways for commerce, and they constitute navigable waters of the United States within the meaning of the Acts of Congress, in contradistinction from navigable waters of the states, when they form in their ordinary condition, by themselves or by uniting with other waters, a continued highway over which commerce is or may be carried on with other states or foreign countries. *The Daniel Ball v. U. S.*, Mich.1871, 77 U.S. 557, 10 Wall. 557, 19 L.Ed. 999. See, also, *U. S. v. Burlington & H. County Ferry Co.*, D.C.Iowa 1884, 21 F. 331.

The court may take judicial notice that a certain river above an obstruction

therein does not, either by itself or by connecting with other waters, constitute a public highway within this section. *Com. v. King*, 1889, 22 N.E. 905, 150 Mass. 221, 5 L.R.A. 536.

4. Exempt vessels generally

Public vessels of the United States, or vessels of other countries, steamers used as ferryboats, tugboats, and towing boats, and steamers not exceeding 150 tons burden, which are used in whole or in part for navigating canals, are exempted from inspection. 1853, 5 Op.Atty. Gen. 676.

5. Commence within state

As to steamer transporting goods destined to other states, though employed wholly within state, see *The Daniel Ball*, Mich.1870, 77 U.S. 557, 10 Wall. 557, 19 L.Ed. 999.

A steam tug engaged exclusively in towing upon a river within the limits of a state was not subject to inspection, under Act June 8, 1864, § 4. *The Farragut*, C.C.Conn.1868, Fed.Cas.No.4,677. See, also, *The Oconto*, D.C.Wis.1873, Fed.Cas.No.10,421, affirmed Fed.Cas.No.9,330.

A vessel engaged in navigation wholly between towns in the same state, though used as a connecting line for transportation into other states, was not engaged in interstate commerce, and was not subject to inspection, under Act June 8, 1864. *The Bright Star*, C.C.Mo. 1868, Fed.Cas.No.1,880.

Act June 8, 1864, did not extend the requirement of the Act of 1852, concerning the inspection of hulls, etc., to vessels engaged in commerce wholly within a state. *Id.*

A steamboat employed in transporting passengers between ports in the same state was not within the inspection law of Aug. 30, 1852. *U. S. v. The Seneca*, D.C.Wis.1861, Fed.Cas.No.16,251.

6. Ferryboats

A steam ferryboat, plying entirely within a state, but in navigable water open to crafts from other states and foreign countries, is subject to such statutes controlling navigation under federal jurisdiction as are applicable to vessels engaged in such business whether operated by a private party or by a municipality. *The Nassau*, D.C.N.Y.1910, 182 F. 696, reversed on other grounds 188 F. 46, 110 C.C.A. 184, error denied 32 S.Ct. 524, 223 U.S. 722, 56 L.Ed. 630.

In the case of a ferryboat running between Astoria and New York on the East

Note 6

River, proof of the carriage of passengers and merchandise is sufficient to throw upon claimants the burden of showing that such passengers and freight were not destined for other states. *The Sunswick*, D.C.N.Y.1872, Fed.Cas.No.13,624.

A boat licensed as a ferryboat, but frequently making trips beyond her ferry limits, was not exclusively engaged in ferrying, and was subject to inspection under Act of 1852. *The Bright Star*, C.C.Mo.1868, Fed.Cas.No.1,880.

The exception in section 42, Act Aug. 30, 1852, applied to a vessel built and used as a ferryboat, and employed one day only in carrying passengers three miles distant to a state fair. *U. S. v. The Ottawa*, D.C.Mich.1857, Fed.Cas.No. 15,976.

7. Foreign vessels

Board of supervising inspectors' regulations having the force of law were applicable to foreign vessels. *Deslions v. La Compagnie Générale Transatlantique*, N.Y.1908, 28 S.Ct. 664, 210 U.S. 95, 52 L.Ed. 973.

The proviso to section 481 of this title, added by amendment by Seamen's Act Mar. 4, 1915, § 14 "that foreign vessels, leaving ports of the United States, shall comply with the rules herein prescribed as to life-saving appliances, their equipment and the manning of same," applies only to such foreign vessels as are subject to the operation of the original section, as defined in this section. *Petition of Canadian Pac. Ry. Co.*, D.C.Wash.1921, 278 F. 180.

Section 469 of this title, as to shipment of dangerous substances, construed in connection with this section, applies to shipments on foreign private steam vessels carrying passengers from ports of the United States to any other place or country. *U. S. v. Giordani*, C.C.N.Y.1908, 163 F. 772.

Only foreign private steam vessels carrying passengers from any port of the United States to any other place or country, which are not exempt by reason of the conditions set forth in this section, are subject to regulations. 1915, 30 Op. Atty.Gen. 441.

The steamship *Europa*, a private vessel of Italian nationality, which was engaged in carrying passengers upon a regularly established line between the ports of the United States and European ports, and which sailed from New York with a certificate of inspection but arrived back at New York more than 30 days after the expiration of such certifi-

cate, did not thereby violate any of the provisions of this chapter for the reason that foreign vessels are subject to inspection only when carrying passengers from the United States. 1911, 29 Op.Atty.Gen. 19.

8. Government boats

Where a steam tug was owned by the government and used by the War Department in towing dredging machines and scows, and for other like purposes, it was not subject to the inspection laws of the United States relating to steam vessels, and unlicensed pilots and engineers might lawfully have been employed upon her. 1870, 13 Op.Atty.Gen. 248.

Public vessels, within the meaning of the inspection and navigation laws, are vessels owned by the United States and used by them for public purposes. *Id.*

Those laws do not warrant any distinction between public vessels under the control of the Navy Department and public vessels under the control of any other department of the government. *Id.*

9. Merchandise vessels

A vessel engaged in transporting merchandise was not subject to a penalty for failure to have her hull and boilers inspected under Act Aug. 30, 1852. *The Sun*, D.C.Wis.1861, Fed.Cas.No.13,612.

10. Private use by owner

This section applies to a steam craft used to transport the owner and his superintendent across the Delaware, and occasionally his workmen, to the number of nine or ten. *Hartranft v. Du Pont*, Pa.1886, 6 S.Ct. 1188, 118 U.S. 223, 30 L.Ed. 205.

11. State vessels

Steam vessels belonging to the state of Maryland, and used by its officers in the enforcement of the state fishery laws, in the Chesapeake Bay to protect the state oyster beds and fishing rights, and to give relief to vessels in distress, are required to have their boilers and hulls inspected, and are liable to the penalties prescribed for noncompliance with federal laws regulating steam vessels. *The Oyster Police Steamers of Maryland*, D.C. Md.1887, 31 F. 763.

"The lower federal courts have frequently ruled that the steamboat inspection laws of the United States apply to boats plying navigable waters of the United States between points wholly within a state and not themselves engaged in interstate commerce. The validity of the federal inspection laws as

applied to such vessels has been sustained under the clause of the Constitution extending the judicial power of the United States to all cases of admiralty jurisdiction. *United States v. Burlington Ferry Co.*, D.C.Iowa 1884, 21 F. 331; *The Garden City*, D.C.N.Y.1886, 26 F. 766, and under the interstate commerce clause of the Constitution *The Oyster Police Steamers of Md.*, D.C.Md.1887, 31 F. 763; *The City of Salem*, D.C.Or.1889, 37 F. 846, and under both these clauses *The Hazel Kirke*, D.C. & C.C.N.Y.1885, 25 F. 601; *U. S. v. Banister Realty Co.*, C.C.N.Y. 1907, 155 F. 583; *The Scow No. 1*, D.C. N.Y.1909, 169 F. 717. Where the inspection laws have been based upon the interstate commerce clause the court has reasoned that a vessel not herself engaged in interstate commerce may be a source of danger to such commerce and that to guard against this danger Congress may regulate the personnel and equipment of all boats navigating waters on which interstate commerce moves.

"The attorney-general of New York has not protested against federal inspection upon the ground that the vessels in question are operated solely within the territorial jurisdiction of New York. His contention is that a sovereign is free from outside interference and that, accordingly, the Federal Government can not enforce regulations with respect to property or employees of a sovereign state while they are engaged in its public service.

"The federal steamboat inspection laws by their terms apply to boats notwithstanding the fact that they are devoted to the public service of a state. By section 4400, Revised Statutes [this section] the laws cover 'all steam vessels navigating any waters of the United States which are common highways of commerce or open to general competitive navigation.' The section excepts 'public vessels of the United States.' In view of this express exception, which is not extended to the public vessels of the several states, it cannot be said that the public vessels of all sovereigns are impliedly excepted from the requirements of the law. The contention of the attorney-general of New York must necessarily be that it is unconstitutional for Congress to subject the public vessels of a state to inspection laws of United States. * * * In my own opinion the contention of the attorney-general of New York cannot be supported either upon principle or upon authority. *The Oyster Police Steamers of Md.*, D.C.Md.1887, 31 F. 763, affirmed, C.C.1888, 35 F. 926, squarely held that steamers owned by a state and used in its public service are

subject to the steamboat inspection laws of the United States. The case also held that such state owned and operated steamers could be libeled for the recovery of the penalties prescribed for a violation of the inspection laws.

"In support of his claim of immunity the attorney-general of New York cites *Ex parte State of New York*, No. 1, N.Y. 1921, 41 S.Ct. 588, 256 U.S. 490, 65 L.Ed. 1057, and *Ex parte State of New York*, No. 2, N.Y.1920, 41 S.Ct. 592, 256 U.S. 503, 65 L.Ed. 1063. The first of these cases decided that a private individual cannot sue a state in personam in admiralty if the state has not consented to such suit. The second case decided that a private litigant cannot proceed in rem in admiralty against the property of a state which it is using in its public service.

"The present issue does not concern a suit in personam by a private litigant against a state. Neither does it concern a suit in rem against state property by a private litigant. The rule of public policy which holds that the public property of a sovereign is immune from process in ordinary litigation may fall before an express enactment of Congress permitting process against state public property as a method of enforcing constitutional laws of the United States. Section 4499 Revised Statutes [section 497 of this title] makes 'any vessel' failing to comply with the requirements of Title 52 of the Revised Statutes subject to seizure for the penalty provided by the section. * * *

"But even if *Ex parte State of New York*, No. 2, means that the public property of a state can never be proceeded against in rem, the case would still not be authority for the proposition that the federal steamboat inspection laws do not apply to state public property. Even if given this interpretation, the case would concern only the method of enforcing the penalties prescribed for violation of the federal law; it would not touch the primary question of the extent and scope of those laws.

"The question of the proper method to enforce a penalty against a state if it refuses to permit proper federal inspection of its steam vessels while operating on navigable waters of the United States is not now in issue." 1923, 33 Op.Atty.Gen. 500.

12. Vessels beyond jurisdiction

The regulations provided by this title do not apply to American steam vessels while engaged in commerce beyond the jurisdiction of the United States. 1894, 21 Op.Atty.Gen. 52.

Note 12

Expired inspection certificates cannot be extended by consular officers of the United States and there is no authority of law for sending local inspectors out of the country to make inspection. *Id.*

13. Yachts

A small steam pleasure yacht, run occasionally by its owners, for amusement, on Buffalo Bayou, below Houston, Tex., is not a vessel navigating the public waters of the United States, in the meaning of the steam inspection law. *U. S. v. The Mollie*, C.C.Tex.1876, Fed.Cas.No.15,795.

14. Navigation between Panama and San Francisco

Vessels propelled by steam, and employed in the transportation of passengers by sea between Panama and San Francisco, are within the provision of the acts of Congress regulating the transportation of passengers in merchant vessels. 1854, 6 Op.Atty.Gen. 393.

15. Certificate of inspection

An unexpired certificate of inspection by Canadian authorities held by a Cana-

dian steamship at the time of her sinking, and a United States certificate issued pursuant to this section, established that she was properly equipped. *Petition of Canadian Pac. Ry. Co.*, D.C.Wash.1921, 278 F. 180.

The application for and use of the certificate of inspection is sufficient to require the conclusion that a steamboat is subject to the provisions of the federal statutes, and liable for a violation of them. *The Hazel Kirke*, D.C. and C.C. N.Y.1885, 25 F. 601.

16. Neglect of inspectors

If the government inspectors of steam vessels fail to discharge properly their duty of inspection of a vessel, privity or knowledge of defects which would have been revealed by a proper inspection is not to be imputed to a corporation owning the vessel, which has delegated the matter of the inspection of the vessel to a competent employé. *The Annie Faxon*, Wash.1896, 75 F. 312, 21 C.C.A. 366.

§ 363. Department of Commerce vessels

All steam vessels owned or operated by the Department of Commerce, or any corporation organized or controlled by it, shall be subject to all the provisions of title 52 of the Revised Statutes for the regulation of steam vessels and Acts amendatory thereof or supplemental thereto. Oct. 25, 1919, c. 82, 41 Stat. 305; Ex.Ord.No. 6166, §§ 12, 19, June 10, 1933; June 29, 1936, c. 858, Title IX, § 904, 49 Stat. 2016; 1950 Reorg.Plan No. 21, §§ 305, 306, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1277.

Historical Note

References in Text. For distribution of title 52, sections 4399-4500, of the Revised Statutes, referred to in the text, see note under section 170 of this title.

Transfer of Functions. "Department of Commerce" was substituted for "United States Maritime Commission" on authority of 1950 Reorg. Plan No. 21, set out as a note under section 1111 of this title.

All executive and administrative functions of the Maritime Commission were transferred to the Chairman of the Maritime Commission by 1949 Reorg. Plan No. 6, eff. Aug. 20, 1949, 14 F.R. 5228, 63 Stat. 1069. See note under section 1111 of this title.

"United States Maritime Commission" was substituted for "Department of Commerce" on authority of Act June 29, 1936. Specifically, section 904 of that Act, which is classified to section 1243 of this title, substituted "United States Maritime Commission" for "United States Shipping Board". See, however, the next succeeding paragraph of this note.

"Department of Commerce" was substituted for "United States Shipping Board", on authority of Ex.Ord.No. 6166, set out in note under sections 124-132 of Title 5, Executive Departments and Government Officers and Employees.

§ 364. Vessels navigating coastwise and on Great Lakes

All coastwise seagoing vessels, and vessels navigating the Great Lakes, shall be subject to the navigation laws of the United States, when navigating within the jurisdiction thereof; and all vessels, propelled in whole or in part by steam, and navigating as aforesaid, shall be subject to all the rules and regulations established in pursuance of law for the government of steam vessels in passing, as provided by title 52 of the Revised Statutes; and every coastwise seagoing steam vessel subject to the navigation laws of the United States, and to the rules and regulations aforesaid, not sailing under register, shall, when under way, except on the high seas, be under the control and direction of pilots licensed by the Coast Guard. R.S. § 4401; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Derivation. Act Feb. 28, 1871, c. 100, § 51, 16 Stat. 455.

References in Text. For distribution of title 52, sections 4399-4500, of the Revised Statutes, referred to in the text, of which this section is a part, see note under section 170 of this title.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 28, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive

Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

"Coast Guard" was substituted for "inspectors of steamboats" on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Notes of Decisions

Construction with other laws 2

Historical 1

Liability for acts and negligence of pilot 6

Limitation of Liability 7

Necessity for licensed pilot 3

State laws and regulations 3

Vessels within section 4

1. Historical

For a history of this section, see *Anderson v. Pacific Coast Steamship Co.*, Cal.1912, 32 S.Ct. 626, 225 U.S. 187, 56 L. Ed. 1047.

2. Construction with other laws

Section 215 of this title, should be read in connection with this section, since

they contain provisions formerly in a single section. *Anderson v. Pacific Coast Steamship Co.*, Cal.1912, 32 S.Ct. 626, 225 U.S. 187, 56 L.Ed. 1047.

3. State laws and regulations

Coastwise seagoing steam vessels sailing under register, whether employing federal pilots or not, are not exempt from pilotage fees created by Pol.Code Cal. §§ 2432, 2466, 2468, on tender of resident bar pilot service when entering or leaving port of San Francisco, by this section. *Anderson v. Pacific Coast S. S. Co.*, Cal. 1912, 32 S.Ct. 626, 225 U.S. 187, 56 L.Ed. 1047.

Owners of coastwise steam vessels may take any pilot licensed under the authority of the United States, without regard

to the state regulations. *Sprague v. Thompson*, Ga.1886, 6 S.Ct. 988, 118 U.S. 90, 30 L.Ed. 115.

Where the owners of a steamer trading between Philadelphia and Savannah employed one S., a Savannah pilot, licensed under the laws of the United States, as their regular pilot to conduct the vessel over Tyler bar and up the Savannah river, with pay from the time the ship left Philadelphia, from the time of leaving Philadelphia, the ship was "under the control and direction" of such pilot, and hence she was not subject to any further pilot charges under any regulations established by the state of Georgia. *Id.*

Act Aug. 30, 1852, did not establish pilot regulations for ports, but its object was to provide a system under which the masters and owners of vessels, propelled in whole or in part by steam, might be required to employ competent pilots to navigate such vessels on their voyage, and Act Cal. May 20, 1861, establishing pilots for the port of San Francisco, was not in conflict with it. *Pacific Mail S. S. Co. v. Joliffe*, Cal.1865, 69 U.S. 450, 2 Wall. 450, 17 L.Ed. 805.

California is without power to levy pilotage charges on registered vessels making voyages between the port of San Francisco and Washington, ports on Puget Sound in charge of pilots licensed under federal laws, although they make calls at the port of Victoria, B. C., for passengers, freight, and mails. *The Queen*, Cal.1911, 186 F. 725, 108 C.C.A. 595, certiorari denied 32 S.Ct. 842, 225 U.S. 708, 58 L.Ed. 1267.

State pilotage law is abrogated, so far as inconsistent with this section and section 215 of this title. *Commonwealth v. Kemp*, 1926, 150 N.E. 172, 254 Mass. 190.

Massachusetts statutes did not impose penalty on pilot authorized under this section and section 215 of this title to pilot steam coastwise vessel. *Id.*

4. Vessels within section

A steamship engaged in trade between the ports of Porto Rico and the port of New York is a coastwise seagoing vessel. *Huus v. New York & P. R. S. S. Co.*, N. Y.1901, 21 S.Ct. 827, 182 U.S. 392, 45 L.Ed. 1146.

"Coastwise seagoing steam vessels," required by this section, to have a licensed pilot, are vessels engaged in the domestic trade or plying between port and port in the same country, as distinguished from those engaged in foreign trade, and the provision does not apply to foreign

ships. *Petition of Canadian Pac. Ry. Co.*, D.C.Wash.1921, 278 F. 180.

5. Necessity for licensed pilot

Master, who navigated heavily laden vessel without a license, in violation of this section, down a narrow channel, without a proper lookout, in a dense fog, at full speed, and who failed to stop the engine and navigate with caution when he heard fog signal of approaching vessel, as required by section 92 of Title 33, was negligent, rendering the vessel at fault for collision with the approaching vessel. *The Walter D. Noyes*, D.C.Va. 1921, 275 F. 690.

Local usages growing out of the observance of Acts of Congress are binding upon foreign vessels, and pilots are employed, not only to keep such vessels on their proper course, but also to enable them to understand the local usages governing the navigation of the waters in which they are sailing. *Kennedy v. The Sarmatian*, C.C.Md.1880, 2 F. 911.

The presumption is against the proper management of a vessel whose pilot was not a licensed pilot, and had never before acted in that capacity. *The Washington*, C.C.N.Y.1855, Fed.Cas.No.17,220.

Under this section one piloting enrolled vessel doing coastwise trade must have government license. *State v. Ring*, 1927, 259 P. 780, 122 Or. 644, affirmed 48 S.Ct. 338, 276 U.S. 607, 72 L.Ed. 728.

6. Liability for acts and negligence of pilot

Where the pilot in charge of a vessel, whose negligent orders resulted in the collision, was not a compulsory pilot, but one voluntarily accepted as the result of a contract, the vessel is liable in rem. *The Maren Lee*, C.C.A.N.Y.1922, 278 F. 918.

In a suit in personam against the owners of a vessel for collision, the defense that the vessel was being navigated by a licensed pilot, whose taking was compulsory under the law cannot be availed of, unless pleaded in the answer with due certainty and precision. *Hamburg-American Packet Co. v. Rich*, Pa.1908, 159 F. 667, 86 C.C.A. 535.

Where a tug acting as local pilot for a bark anchored her in a harbor in violation of a reasonable harbor regulation, the bark is responsible for the act, and liable for a resulting collision. *The Amiral Cedille*, D.C.Wash.1905, 134 F. 673.

It is the settled law of the admiralty of the United States that a vessel is liable for a collision caused by the neg-

ligent acts of her pilot, although the pilotage was compulsory. *Donald v. Guy*, D.C.Va.1903, 127 F. 228.

There can be no exemption of the owners of a vessel from liability for a collision on the ground that she was in charge of a licensed pilot, whose taking was compulsory under the law, unless it is affirmatively shown that the pilot was solely in fault. *Rich v. Hamburg-American Packet Co.*, D.C.Pa.1902, 117 F. 751.

The fault of a licensed pilot in anchoring a foreign vessel without cargo in the place allotted to loaded vessels by the harbor regulations is not attributable to the vessel. *The Severn*, D.C.Va.1902, 113 F. 578.

Where the pilot of a vessel, without necessity, adopts a dangerous course, and falls in his purpose, the vessel must bear the responsibility. *The George H. Dentz*, D.C.N.Y.1882, 12 F. 575.

The fact that a vessel causing damages by breaking her moorings was moored by the licensed pilot who brought her into port is no defense. *Camden & A. R. Transp. Co. v. The Lotty*, D.C.N.Y. 1848, Fed.Cas.No.2,387a.

7. Limitation of liability

This section does not supersede or displace the proceeding for limited liability. *Butler v. Boston & S. S. Co.*, Mass.1889, 9 S.Ct. 612, 130 U.S. 527, 32 L.Ed. 1017.

§ 365. Vessels navigating Irondequoit Bay

Irondequoit Bay, New York, shall, for the purpose of applying the provisions of title 52 of the Revised Statutes, relating to steam vessels navigating thereon, be declared a navigable water of the United States; and steam vessels navigated thereon, and carrying passengers, shall be inspected under the provisions of section 404 of this title, and subject to the penalties provided therein for a failure to comply therewith. June 25, 1890, c. 616, 26 Stat. 180.

Historical Note

References in Text. For distribution of title 52, sections 4399-4500 of the Revised Statutes, referred to in the text, see note under section 170 of this title.

§ 366. Foreign vessels admitted to registry

The Commandant of the Coast Guard is authorized to direct the inspection of any foreign vessel, admitted to American registry, its steam boilers, steam pipes, and appurtenances, and to direct the issue of the usual certificate of inspection, whether said boilers, steam pipes, and appurtenances are or are not constructed pursuant to the laws of the United States, or whether they are or are not constructed of iron stamped pursuant to said laws. The tests in the inspection of such boilers, steam pipes, and appurtenances shall be the same in all respects as to strength and safety as are required in the inspection of boilers constructed in the United States for marine purposes. Mar. 3, 1897, c. 389, § 14, 29 Stat. 690; Feb. 14, 1903, c. 552, § 10, 32 Stat. 829; Mar. 4, 1913, c. 141, § 1, 37 Stat. 736; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Codification. Upon incorporation into the Code, the words, "Secretary of Commerce," were substituted for "Secretary of the Treasury" to conform to Act Feb.

14, 1903, which transferred the duties and powers of the Secretary of the Treasury relating to merchant vessels to the Secretary of Commerce and Labor, and Act

Mar. 4, 1913, which provided that the Secretary of Commerce and Labor should be called the Secretary of Commerce.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred

to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

"Commandant of the Coast Guard" was substituted for "Secretary of Commerce" on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

§ 367. Seagoing vessels propelled by internal-combustion engines

Existing laws covering the inspections of steam vessels are made applicable to seagoing vessels of three hundred gross tons and over propelled in whole or in part by internal-combustion engines to such extent and upon such conditions as may be required by the regulations of the Commandant of the Coast Guard: *Provided*, That this section shall not apply to any vessel engaged in fishing, oystering, clamming, crabbing, or any other branch of the fishery or kelp or sponge industry: *Provided further*, That as to licenses required for masters and engineers operating vessels propelled by internal-combustion engines operating exclusively in the district covering the Hawaiian Islands, said masters and engineers shall be under the jurisdiction of the Coast Guard officials having jurisdiction over said waters, who shall make diligent inquiry as to the character, merits, and qualifications, and knowledge and skill of any master or engineer applying for a license. If the said Coast Guard officials shall be satisfied from personal examination of the applicant and from other proof submitted that the applicant possesses the requisite character, merits, qualifications, knowledge, and skill, and is trustworthy and faithful, they shall grant him a license for the term of five years to operate such vessel under the limits prescribed in the license. The term "seagoing vessels" as used in this section shall be construed to mean vessels which in the usual course of their employment proceed outside the line dividing the inland waters from the high seas as designated and determined under the provisions of section 151 of Title 33. June 20, 1936, c. 628, §§ 1, 2, 49 Stat. 1544, 1545; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agen-

cies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with

power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the

Navy under sections 1 and 3 of Title 14, Coast Guard.

"Commandant of the Coast Guard" was substituted for "Board of Supervising Inspectors of Steam Vessels, with the approval of the Secretary of Commerce" and "Coast Guard officials" for "hull and boiler inspectors" on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

PLANS AND SPECIFICATIONS FOR CONSTRUCTION OR ALTERATION OF PASSENGER VESSELS

§ 369. Examination and approval by Commandant of the Coast Guard—Technical staff; qualifications and appointment; duty to pass on plans and specifications; notice of disapproval

(a) There shall be in the Coast Guard a technical staff, consisting of the Commandant and technical members who shall be selected for their knowledge, skill, and practical experience in designing and supervising the construction and operation of vessels propelled by machinery, and they shall be competent judges of the character, strength, stability, and safety qualities of such vessels and their equipment. Such technical members shall be appointed by the Commandant of the Coast Guard, without reference to the civil-service laws and regulations. The Commandant of the Coast Guard with the advice and assistance of the technical staff so appointed shall pass upon all contract plans and specifications for passenger vessels of the United States of one hundred gross tons and over, propelled by machinery, as provided for by subsection (b) of this section, including the installation of tested and effective sprinkler systems, and upon arrangement plans for all material alterations to existing vessels. Such approval shall be given promptly and with due regard to the orderly progress of the work but only when the Commandant is satisfied, after a full and complete examination of the plans and specifications, that the vessel, when built or altered, as the case may be, can be navigated with safety to those on board. In case the said Commandant shall disapprove such plans and specifications, the person or persons submitting the same shall be apprised thereof the reasons for such disapproval and advised of the amendments necessary to secure such approval. The Commandant shall, at as early a date as practicable, and from time to time thereafter as he shall deem advisable, formulate and publish regulations and instruc-

tions for the guidance of builders of prospective vessels showing the safety characteristics of vessels which will meet the approval of the Commandant.

Approval condition precedent to certificate of inspection; alterations in plans after approval; acceptance of plans approved by American Bureau of Shipping

(b) No passenger vessel of the United States of one hundred gross tons and over, propelled by machinery, the construction or material alteration of which shall be begun subsequent to May 27, 1936, shall be granted a certificate of inspection by the Coast Guard unless the said general contract plans and specifications therefor shall have been submitted at least in triplicate to and approved by the aforesaid Commandant of the Coast Guard before the construction of such vessel or alteration thereof shall have been commenced; nor shall any such vessel, the said plans or specifications for which have been materially altered subsequent to such approval be granted a certificate, as aforesaid, unless such altered plans and specifications shall have been submitted at least in triplicate to and approved by the said Commandant, prior to such change in construction having been made. No such certificate shall be granted to any such vessel which has not been constructed and equipped in accordance with said plans and specifications approved as aforesaid: *Provided*, That approved plans and certificates of the American Bureau of Shipping classed vessels may be accepted by the Commandant as evidence of the structural efficiency of the hull and the reliability of the machinery of such vessels, except as far as existing law places definite responsibility on the Coast Guard. The American Bureau of Shipping shall continue to function in connection with the Government, its bureaus, departments, boards, and commissions, as heretofore provided by section 881 of this title, and as provided in sections 85-85g of this title, or any similar Act hereinafter enacted.

Endorsement of approval on plans; departure from plans; refusal to issue certificate; making alterations before approval of modified plans; penalty

(c) Upon the approval by the said Commandant of the Coast Guard of the original or modified plans and specifications for any such vessel or for any subsequent alteration of such vessel, an endorsement to that effect, signed by the Commandant, shall be placed upon such plans and specifications, and one copy thereof shall be delivered to the person or persons submitting the same. Whenever any Coast Guard official shall ascertain to his satisfaction that any such vessel does not conform in all material respects to said plans and specifications approved as aforesaid, he shall immediately report his conclusions to the aforesaid Commandant, setting forth the reasons for his belief; and if, after a preliminary examination of the facts of the case, the said Commandant shall be of the opinion that reasonable ground exists for believing the conclusions of such reporting officer to be correct, he shall notify the person or persons who submitted the said plans and specifications and the Coast Guard

official who shall not issue the vessel's certificate of inspection until the discrepancy has been corrected to the satisfaction of the said Commandant. The final decision of the Commandant shall be reached with as little delay as the proper consideration of the question will permit. The owner of any vessel coming within the provisions of this section shall notify the Commandant of any material alterations proposed to be made on such vessel, and should any such alteration be made on such vessel before the plans and specifications for such alteration have received the approval of the said Commandant the owners shall, in addition to any suspension of the certificate of inspection which the Commandant may determine to be necessary, incur a penalty of \$500 for which the vessel shall be liable and which may be mitigated or remitted by the Commandant on such condition as he may deem proper.

**Matters included in term "plans and specifications";
specification for fire-retardant material**

(d) The words "plans and specifications" wherever used in this section shall be held to include prints of all general contract plans and copies of the specifications and other matters of a similar nature, as necessary to the purposes of this section for any vessel to which this section applies. The said plans and specifications of all passenger ships of one hundred gross tons and over shall specify for fire-retardant material in their construction so far as reasonable and practicable.

Defacing or destruction of plans; penalty

(e) Any person or persons who shall alter, deface, obliterate, remove, or destroy any plans or specifications approved as provided in this section, with intent to deceive or delay any officer of the United States in the discharge of his duties under this section, shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction shall be punished by a fine of not to exceed \$5,000 or by imprisonment for not to exceed five years, or by both such fine and imprisonment, in the discretion of the court.

Effective date of section

(f) This section shall not take effect as to vessels under five hundred gross tons until three months, nor as to vessels of five hundred gross tons and over until thirty days, after May 27, 1936. May 27, 1936, c. 463, § 5, 49 Stat. 1384; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any

of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service

in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

References to Secretary of Commerce in second sentence of subsec. (a) and in provision of subsec. (c) authorizing mitigation or remission of penalty and references to Director of the Bureau of Marine Inspection and Navigation throughout section were changed to Commandant of the Coast Guard; "the Coast Guard" was substituted for "the Bureau of Marine Inspection and Navigation" in sub-

sec. (a) and second sentence of subsec. (b) and for "a board of local inspectors of the Bureau" in first sentence of subsec. (b); "Coast Guard official" was substituted for "inspector" and "board of local inspectors of the Bureau" in subsec. (c); and a proviso of subsec. (a) making regulations and instructions subject to approval of the Secretary of Commerce was omitted, on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

APPOINTMENT, QUALIFICATIONS, DUTIES, AND SALARIES OF INSPECTORS AND OTHER OFFICERS

§ 371. Repealed. Aug. 4, 1949, c. 393, § 20, 63 Stat. 561.

Historical Note

Section, R.S. § 4402; Act July 2, 1918, c. 115, 40 Stat. 739, related to Supervising Inspector General and Deputy Supervising Inspector General for the former Steamboat Inspection Service, and is not now covered.

Effective Date of Repeal. Repeal of section effective as of the first day of the third month after the month of approval, August 1949, see note set out preceding chapter 1 of Title 14, Coast Guard.

§ 372. Administration of inspection laws

The Commandant of the Coast Guard shall superintend the administration of the steamboat-inspection laws, and produce a correct and uniform administration of the inspection laws, rules, and regulations. R.S. § 4403; Feb. 14, 1903, c. 552, § 10, 32 Stat. 829; Mar. 4, 1913, c. 141, § 1, 37 Stat. 736; June 30, 1932, c. 314, §§ 501, 502(b), 47 Stat. 415; May 27, 1936, c. 463, § 1, 49 Stat. 1380; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Derivation. Act Feb. 28, 1871, c. 100, § 63, 16 Stat. 453.

Codification. Upon incorporation into the Code, the words "Secretary of Commerce" were substituted for "Secretary of the Treasury" to conform to Acts Feb. 14, 1903, and Mar. 4, 1913. See note under section 366 of this title.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions,

to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard,

and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

"Supervising Inspector General" was changed to "Director, Bureau of Navigation and Steamboat Inspection" and then to "Director of the Bureau of Marine Inspection and Navigation" by Acts June 30, 1932 and May 27, 1936. See note under section 1 of this title.

"Commandant of the Coast Guard" was substituted for "Director of the Bureau

of Marine Inspection and Navigation" and provisions concerning presiding at the meetings of the Board of Supervising Inspectors receiving of reports and accounts of inspectors and reports to Secretary of Commerce were omitted on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

§§ 373-374a. Omitted

Historical Note

Codification. Sections have been omitted from the Code because of the abolishment, by 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, of the offices and bureau for which they provided or to which they related. See note under section 1 of this title.

Section 373, R.S. § 4404; Acts July 2, 1918, c. 115, 40 Stat. 740; May 27, 1936, c. 463, § 2, 49 Stat. 1381, provided for the appointment and compensation of supervising inspectors.

Section 374, Acts Mar. 4, 1911, c. 237, § 1, 36 Stat. 1229; Mar. 4, 1913, c. 141, § 1, 37 Stat. 736; June 30, 1932, c. 314, § 501, 47 Stat. 415; May 27, 1936, c. 463, § 2, 49 Stat. 1381, related to performance of duties during absence of supervising inspectors.

Section 374a, Act May 27, 1936, c. 463, § 3, 49 Stat. 1381, provided for principal traveling inspectors in the field service of the Bureau of Marine Inspection and Navigation.

§ 375. Regulations of the Commandant

The Commandant of the Coast Guard shall establish all necessary regulations required to carry out in the most effective manner the provisions of title 52 of the Revised Statutes, and also regulations, prohibiting useless and unnecessary whistling, and such regulations shall have the force of law. R.S. § 4405; Mar. 3, 1905, c. 1453, § 1, 33 Stat. 1022; Feb. 8, 1907, c. 892, 34 Stat. 881; Mar. 4, 1913, c. 141, § 1, 37 Stat. 736; June 30, 1932, c. 314, §§ 501, 502(b), 47 Stat. 415; May 27, 1936, c. 463, § 1, 49 Stat. 1380; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Derivation. Act Feb. 28, 1871, c. 100, § 23, 16 Stat. 449.

References in Text. For distribution of title 52, sections 4399-4500, of the Revised Statutes, referred to in the text, of which this section is a part, see note under section 170 of this title.

Codification. R.S. § 4405 was amended by Act Mar. 3, 1905, by changing the words "Secretary of the Treasury," where they occurred in the original section, to "Secretary of Commerce and Labor," and by adding, at the end of the original

section, which closed with the words "in such manner as the board shall prescribe," a proviso authorizing the Secretary of Commerce and Labor to call a meeting of the executive committee having power to alter, amend, etc., the rules and regulations.

The section was further amended by Act Feb. 8, 1907, by inserting provision for establishing regulations prohibiting unnecessary whistling.

Upon incorporation into the Code, the words "Secretary of Commerce" were

substituted for "Secretary of Commerce and Labor" to conform to Act Mar. 4, 1913, which provided that the Secretary of Commerce and Labor should be called the Secretary of Commerce.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast

Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

"Supervising Inspector General" was changed to "Director, Bureau of Navigation and Steamboat Inspection" and then to "Director of the Bureau of Marine Inspection and Navigation" by Acts June, 30, 1932, and May 27, 1936. See note under section 1 of this title.

Provisions concerning the composition, meetings and regulations of the Board of Supervising Inspectors and approval of regulations by the Secretary of Commerce were omitted and reference to the Board was changed to Commandant of the Coast Guard on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Notes of Decisions

Foreign vessels, regulations 5
Meetings of board 1
Operation and effect of regulations 4
Power of Secretary as to regulations 3
Prosecution for evading regulations 6
Regulations 2-6
Foreign vessels 5
Operation and effect 4
Power of Secretary 3
Prosecution for evading 6

1. Meetings of board

Called meetings of the board of supervising inspectors might have been held at places other than Washington, within the judgment of the Secretary of Commerce and Labor. (1903) 25 Op. Atty. Gen.

2. Regulations

Hatch cover was sufficient though bars were not of regulation type or fastened in the most approved manner. The Williams A. McKenney (D.C. Mass. 1930) 41 F.2d 754.

Rule of the board of supervising inspectors relating to the re-examination of persons whose application for a license as pilot has been rejected was reasonable. Williams v. Potter (N.Y. 1915) 223 F. 423, 139 C.C.A. 17.

Regulations respecting the granting of pilot licenses were invalid as imposing unauthorized conditions upon the right

of an applicant. Williams v. Molther (N.Y. 1912) 198 F. 460, 117 C.C.A. 220.

Inspectors' Rule 5, § 15, requiring masters of steam vessels to keep the fire apparatus thereon in complete working order, and to post station bills and exercise the crew in their duties in connection therewith, was within the power conferred on the board, since it did not purport to create offenses, but merely to prescribe duties, but a breach of it, resulting from a master's misconduct, negligence, or inattention, causing death, was manslaughter, because so provided by Congress. U. S. v. Van Schaick (C.C.N.Y. 1904) 134 F. 592.

The rule that all passenger and freight steamers shall have one of the crew on watch in or near the pilot house was authorized. Flint & P. M. R. Co. v. Marine Ins. Co. (C.C. Mich. 1895) 71 F. 210.

The supervising inspectors had no power to prescribe what lights shall be carried by freight barges, the provisions of R.S. Title 52 (incorporated in part in this chapter) being silent in regard to them. U. S. v. Miller (D.C.N.Y. 1886) 26 F. 95.

A regulation respecting the indication of the tack on which a vessel was sailing in a fog by blasts of her fog horn was neither a necessary nor an appropriate regulation to carry out any provision found in R.S. Title 52 (incorporated in part in this chapter) and it was without

force. The Steamship *Eleanora* (C.C.N.Y. 1879) 17 Blatchf. 88, 8 Fed.Cas.No. 4,335.

The board of supervising inspectors of steam vessels continued to have power to make regulations not inconsistent with the regulations in Act Aug. 19, 1890 (chapter 2 of Title 33, Navigation and Navigable Waters), for the prevention of collisions at sea, and that board was not a "local authority" within the meaning of article 30 (section 131 of Title 33). (1894) 21 Op.Att'y.Gen. 106.

Section 14 of rule 5 of General Rules and Regulations, in regard to issuing licenses as master of steam vessels, which was adopted by the board of supervising inspectors and approved by the Secretary of the Treasury, was within the authority conferred by this section, and the same had the force of law. (1891) 20 Op.Att'y.Gen. 212.

3. — Power of Secretary

The Secretary of Commerce and Labor was not authorized to amend, modify, or repeal existing regulations, or to adopt new regulations for the enforcement of the provisions of this title, without prior action thereon by the board of supervising inspectors, and the Secretary had, therefore, no authority whatever in the matter, except as conferred by this section. (1903) 25 Op.Att'y.Gen. 67.

4. — Operation and effect

Rule requiring presence of quartermaster in pilot house does not excuse absence of lookout. The *Scandinavia* (D. C.N.Y.1918) 11 F.2d 542.

Rules promulgated under this section have the force of law. Petition of Canadian Pac. Ry. Co. (D.C.Wash.1921) 278 F. 180.

Rule 38 prescribed by the board of supervising inspectors, that "all passenger and ferry steamers, shall in addition to the regular pilot on watch, have one of the crew also on watch in or near the pilot house" did not supersede the long established admiralty rule requiring a competent lookout and that he shall be placed in the forward part of a forward moving vessel, in view of the provision of article 29 of the Inland Rules (section 221 of Title 33, Navigation and Navigable Waters). The *Tillicum* (D.C.Wash.1914) 217 F. 976.

Regulations to guard against collision established by the board of supervising inspectors had the force of law, but they were only valid and obligatory in so far as they were not inconsistent with statutory regulations. The *Aurelia* (D.C. Cal.1910) 183 F. 341.

5. — Foreign vessels

Regulations were applicable to foreign vessels. *Deslions v. La Compagnie Générale Transatlantique* (N.Y.1908) 28 S.Ct. 684, 210 U.S. 95, 52 L.Ed. 973.

6. — Prosecution for evading

An indictment for conspiracy to defraud the United States by evading the regulations established under the authority of this section need not allege that the vessel was not a public vessel. *U. S. v. Stone* (D.C.N.J.1905) 135 F. 394.

376-380. Omitted

Historical Note

Codification. Sections 376-380 were superseded by the provisions of 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, which abolished the offices of supervising inspectors and the boards of local inspectors. See note under section 1 of this title.

Section 376, R.S. § 4406, required supervising inspectors to watch over their territory and to visit the local boards of inspectors and licensed vessels.

Section 377, R.S. § 4407; Acts Feb. 14, 1903, c. 552, § 10, 32 Stat. 829; Mar. 4, 1913, c. 141, § 1, 37 Stat. 736, provided for reports by supervising inspectors of any violations of specified provisions of law and of failures in performance of duty by boards of local inspectors.

Section 378, R.S. § 4408, required supervising inspectors to see that boards of local inspectors executed their duties faithfully, promptly and uniformly.

Section 379, R.S. § 4409; Act Feb. 27, 1877, c. 69, § 1, 19 Stat. 251, required supervising inspectors to visit districts not having boards of local inspectors and perform the duties of such boards there and in other districts where boards were not available.

Section 380, R.S. § 4411, provided that the board of supervising inspectors should establish regulations to make known to local inspectors the names of persons whose licenses had been granted and the names of vessels failing to make repairs and vessels refused inspection certificates.

§ 381. Regulations as to passing steamers

The Commandant of the Coast Guard shall establish such regulations to be observed by all steam vessels in passing each other, as he shall from time to time deem necessary for safety; two printed copies of such regulations, signed by him, shall be furnished to each of such vessels, and shall at all times be kept posted up in conspicuous places in such vessels.

Every pilot, engineer, mate, or master of any steam vessel who neglects or willfully refuses to observe the regulations established in pursuance of this section, shall be liable to a penalty of \$50, and for all damages sustained by any passenger, in his person or baggage, by such neglect or refusal.

The provisions of this section shall not apply to steam vessels navigating the harbors, rivers, and inland waters of the United States, except the Great Lakes and their connecting and tributary waters as far east as Montreal and the Red River of the North and rivers emptying into the Gulf of Mexico and their tributaries. R.S. §§ 4412, 4413; Aug. 19, 1890, c. 802, 26 Stat. 320; Feb. 8, 1895, c. 64, 28 Stat. 645; June 7, 1897, c. 4, § 5, 30 Stat. 103; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Derivation. Act Feb. 28, 1871, c. 100, § 29, 16 Stat. 450.

Codification. The first paragraph of this section is from R.S. § 4412, the second paragraph from R.S. § 4413, and the last paragraph is based on Act June 7, 1897.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive

Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

"Commandant of the Coast Guard" was substituted for "board of supervising inspectors" on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Cross References

Navigation rules generally, see chapters 2-5 of Title 33, Navigation and Navigable Waters.

Red River of the North and rivers emptying into Gulf of Mexico and tributaries, penalties for violation of laws, rules, and regulations relating thereto, see sections 354 and 355 of Title 33, Navigation and Navigable Waters.

Notes of Decisions

Binding effect of rules 3
 Persons liable 5
 Repeals 1
 Rules
 Validity and binding effect 3
 Violations 4
 Vessels within section 2
 Violations of rules 4

1. Repeals

Inland Rules of 1897, § 5, incorporated in part in the third paragraph of this section, repealed R.S. § 4233, chapter 5 of Title 33, and put canal boats and barges in subd. (d) of art. 15, section 191 of Title 33, which covers all vessels not steam or sail at anchor in a fog. The Cohocton (D.C.N.Y.1923) 299 F. 316, modified on other grounds 299 F. 319.

The first paragraph of this section was not repealed by Act Mar. 3, 1885 (superseded), adopting the revised international regulations to prevent collision at sea, and a pilot violating a rule established by such board was liable to the penalty therefor imposed by the second paragraph of this section. U. S. v. Greenman (D.C.Conn.1888) 37 F. 64.

2. Vessels within section

The inspector's power to adopt rules is limited to vessels "navigating any waters of the United States which are common highways of commerce, or open to general or competitive navigation." The New York (Mich.1899) 20 S.Ct. 67, 175 U.S. 187, 44 L.Ed. 126.

This section applies only to regulations to be observed by passing steam vessels. Beck v. Johnson (C.C.Ky.1909) 169 F. 154.

3. Rules—Validity and binding effect

The inspectors' rules are valid and binding, in so far as they do not conflict with statutory rules. Belden v. Chase (N.Y.1898) 14 S.Ct. 264, 150 U.S. 674, 37 L.Ed. 1218. See, also, The Grand Republic (D.C.N.Y.1883) 16 F. 424; The B. B. Saunders (D.C.N.Y.1884) 19 F. 118; The T. B. Van Houten (D.C.N.Y.1892) 50 F. 590; The Aurella (D.C.Cal.1910) 183 F. 341; 1894, 21 Op.Atty.Gen. 106.

Rules adopted under this section have the force of statute and cast on a vessel, violating them, the burden of showing that the violation in no way contributed to the collision. The Varanger (C.C.A. Md.1881) 50 F.2d 724.

Pilot rules, adopted by the supervising inspectors, are valid and binding. The Transfer No. 8 (D.C.N.Y.1926) 14 F.2d 448.

Pilot rules, made under this section, for the Mississippi River, were not inconsistent with the statutory rules for the avoidance of collisions, and hence binding upon navigators. The John D. Rockefeller (C.C.A.Va.1921) 272 F. 67, certiorari denied 41 S.Ct. 535, 256 U.S. 693, 65 L.Ed. 1175.

The rule requiring barges in tow to carry colored lights is unauthorized. U. S. v. Miller (D.C.N.Y.1886) 26 F. 95.

The rules requiring vessel signaled to "answer promptly" are of binding obligation. The Garden City (D.C.N.Y.1884) 19 F. 529.

The inspectors have authority to frame additional regulations in regard to steamers passing each other, not in conflict with the statutory rules, and their rules requiring steamers in the fifth situation to pass ordinarily to the right, but permitting vessels in peculiar situations to pass to the left upon sounding a signal of two whistles, is within the scope of their powers, and obligatory on vessels navigating the harbors. The B. B. Saunders (D.C.N.Y.1884) 19 F. 118.

The rule requiring a steamer in the fifth situation, having the other steamer on her own starboard bow, to go to the right, is not in conflict with the 19th statutory rule, section 344 of Title 33, though it takes away the option existing under the latter to go to the right or the left. The Grand Republic (D.C.N.Y.1883) 16 F. 424.

By section 375 of this title, these rules, when approved by the Secretary of the Treasury, "have the force of law." The Jesse Williamson, Jr. (C.C.N.Y.1879) 17 Blatchf. 106, 13 Fed.Cas.No. 7,296, appeal dismissed 2 S.Ct. 669, 108 U.S. 305, 27 L.Ed. 730.

4. — Violations

Rule 6 of the supervising inspectors, promulgated under this section, requiring steamers rounding a short bend or point, which would prevent an approaching steamer being seen at 600 yards, to sound a whistle, was not violated by failing to whistle, where the bend was sufficiently long and flat to permit the approaching steamer to keep the other in sight continuously for at least a mile. The Duquesne (C.C.A.Pa.1920) 262 F. 1.

Where transport was traveling down stream with 5 knot current at engine speed of 14 knots, despite having encountered intermittent fog banks, and fog whistles of tanker which was anchored in fog could be heard even though vessel could not be seen, and speed of transport was reduced when she arrived at fog bank only by reduction of engine speed from full to half speed ahead and from half to slow ahead just prior to collision, transport was not proceeding at moderate speed required by ap-

propriate rules of navigation, chapter 5 of Title 33, and such excessive speed was direct cause of resultant collision with tanker. *Panama Transport Co. v. U. S.*, D.C.N.Y.1951, 102 F.Supp. 958.

5. Persons liable

A recovery under the second paragraph of this section is only authorized against pilots, engineers, mates, and masters, as distinguished from owners. *Beck v. Johnson* (C.C.Ky.1909) 169 F. 154.

§§ 382 to 382a—1. Omitted

Historical Note

Codification. Sections have been omitted from the Code because of the abolishment, by 1946 Reorg.Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, of the offices, positions and boards for which they provided or to which they related. See note under section 1 of this title.

Section 382, R.S. § 4414; Acts Jan. 3, 1887, c. 12, 24 Stat. 354; July 26, 1890, c. 721, 26 Stat. 292; Mar. 1, 1895, c. 146, § 2, 28 Stat. 699; Mar. 2, 1895, c. 186, 28 Stat. 843; Feb. 15, 1897, c. 231, 29 Stat. 530; Apr. 21, 1898, c. 184, 30 Stat. 360; June 2, 1900, c. 614, 31 Stat. 262; Mar. 3, 1905, c. 1455, 33 Stat. 1026; Apr. 9, 1906, c. 1372, § 1, 34 Stat. 106; May 23, 1908, c. 212, § 9, 35 Stat. 428; Mar. 4, 1913, c. 159, 37 Stat. 1013; Oct. 22, 1913, c. 32 § 3, 72 Stat. 223; Feb. 26, 1917, c. 125, 39

Stat. 942; July 2, 1918, c. 115, 40 Stat. 740; Apr. 19, 1924, c. 129, §§ 1, 2, 43 Stat. 104; May 17, 1932, c. 190, 47 Stat. 158; June 30, 1932, c. 314, § 501, 47 Stat. 415; May 27, 1936, c. 463, § 1, 49 Stat. 1380, provided for local inspectors of hulls and inspectors of boilers in enumerated collection districts and ports, for assistant inspectors, traveling inspectors and clerks, and for their salaries and traveling expenses.

Section 382a, Acts May 22, 1928, c. 684, 45 Stat. 710; June 30, 1932, c. 314, §§ 501, 502, 47 Stat. 415; May 27, 1936, c. 463, § 1, 49 Stat. 1380, provided for a board of local inspectors at Hoquiam, Washington.

Section 382a—1, Act Apr. 5, 1938, c. 73, 52 Stat. 200, provided for a board of local inspectors at Port Arthur, Texas.

§ 382b. Extra pay for overtime services; payment by owner or master or agent; appropriations; regulation of varying working hours

The Commandant of the Coast Guard shall fix a reasonable rate of extra compensation for overtime services of Coast Guard officials and customs officers and employees, who may be required to remain on duty between the hours of 5 o'clock postmeridian and 8 o'clock antemeridian or on Sundays or holidays to perform services in connection with the inspection of vessels or their equipment, supplying or signing on or discharging crews of vessels on the basis of one-half day's additional pay for each two hours or fraction thereof of at least one hour that the overtime extends beyond 5 o'clock postmeridian (but not to exceed two and one-half days' pay for the full period from 5 o'clock postmeridian to 8 o'clock antemeridian) and two additional days' pay for Sunday or holiday duty. The said extra compensation for overtime services shall be paid by the master, owner, or agent of such vessel to the local United States collector of cus-

toms or his representative who shall deposit such collection into the Treasury of the United States to an appropriately designated receipt account. The amount of the receipts so covered during the fiscal year 1936 is authorized to be appropriated and made available for payment of extra compensation for overtime services to the several employees entitled thereto according to rates fixed therefor by the Secretary of Commerce: *Provided*, That effective July 1, 1936, and thereafter, the amounts of such collections received by the said collector of customs or his representative shall be covered into the Treasury as miscellaneous receipts; and the payments of such extra compensation to the several employees entitled thereto shall be made from the annual appropriations for salaries and expenses of the Coast Guard: *Provided further*, That to the extent that the annual appropriations, which are hereby authorized to be made from the general fund of the Treasury, are insufficient, there are authorized to be appropriated from the general fund of the Treasury such additional amounts as may be necessary, to the extent that the amounts of such receipts are in excess of the amounts appropriated: *Provided further*, That such extra compensation shall be paid if such officers or employees have been ordered to report for duty and have so reported, whether the actual inspection of the vessel or her equipment, or the supplying, or signing on, or discharging crews takes place or not: *And provided further*, That in those ports where customary working hours are other than those hereinabove mentioned, the Coast Guard officials or collectors of customs, as the case may be, are vested with authority to regulate the hours of such employees so as to agree with prevailing working hours in said ports, but nothing contained in this proviso shall be construed in any manner to alter the length of a working day for the Coast Guard officials or customs officers and employees, or the overtime pay herein fixed. May 27, 1936, c. 463, § 6, 49 Stat. 1385; May 11, 1938, c. 194, 52 Stat. 345; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

1938 Amendment. Act May 11, 1938, amended section by including customs officers and employees as persons entitled to extra pay for overtime and by authorizing collectors of customs also to regulate working hours.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note

under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

"Commandant of the Coast Guard" was substituted for "Secretary of Commerce", references to local inspectors and United States shipping commissioners and their assistants and deputies were changed to Coast Guard officials, and "Coast Guard" was substituted for a reference to the

Bureau of Marine Inspection and Navigation in first proviso, on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

§§ 382c–385. Omitted

Historical Note

Codification. Sections have been omitted from the Code because of the abolishment, by 1946 Reorg. Plan No. 3, §§ 101–104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, of the offices, positions, boards and bureaus to which they related. See note under section 1 of this title.

Section 382c, Act Apr. 30, 1940, c. 160, 54 Stat. 169, authorized the Secretary of Commerce to rearrange the location of boards of local inspectors.

Section 383, Acts Oct. 22, 1913, c. 32, 38 Stat. 223; June 30, 1932, c. 314, § 501, 47 Stat. 415; May 27, 1936, c. 463, § 1, 49 Stat. 1380, related to traveling ex-

penses of inspectors and other employees in the Bureau of Marine Inspection and Navigation.

Section 384, R.S. § 4415; Acts Feb. 27, 1877, c. 69, § 1, 19 Stat. 251; Mar. 3, 1905, c. 1457, § 1, 33 Stat. 1028; Mar. 4, 1913, c. 141, § 1, 37 Stat. 736, related to the qualifications of the inspector of hulls and inspector of boilers and provided that the two should constitute a board of local inspectors.

Section 385, R.S. § 4416; Act Mar. 3, 1905, c. 1457, § 2, 33 Stat. 1029, specified disqualifications for the offices of supervising, local, and assistant inspector and provided a penalty for violation.

SMALL PASSENGER-CARRYING VESSELS

§ 390. Definitions

When used in sections 390–390g, 404, and 526f of this title, unless the context requires otherwise—

(a) The term “passenger” means every person carried on board a passenger-carrying vessel other than—

- (1) the owner or his representative;
- (2) the master and the bona fide members of the crew engaged in the business of the vessel who have contributed no consideration for their carriage and who are paid for their services;
- (3) any employee of the owner of the vessel engaged in the business of the owner, except when the vessel is operating under a bareboat charter;
- (4) any employee of the bareboat charterer of the vessel engaged in the business of the bareboat charterer;
- (5) any guest on board a vessel which is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for his carriage; or
- (6) any person on board a vessel documented and used for tugboat or towboat service of fifty gross tons or more who has not contributed any consideration, directly or indirectly, for his carriage.

(b) The term "passenger-carrying vessel" means any vessel which carries more than six passengers, and which is (1) propelled in whole or in part by steam or by any form of mechanical or electrical power and is of fifteen gross tons or less; (2) propelled in whole or in part by steam or by any form of mechanical or electrical power and is of more than fifteen and less than one hundred gross tons and not more than sixty-five feet in length measured from end to end over the deck excluding sheer; (3) propelled by sail and is of seven hundred gross tons or less; or (4) non-self-propelled and is of one hundred gross tons or less; except any public vessel of the United States or of any foreign state, or any lifeboat forming part of a vessel's lifesaving equipment. The term includes (1) any domestic vessel operating on the navigable waters of the United States, or on the high seas outside of those waters and within the normal operating range of the vessel, and (2) any foreign vessel departing from a port of the United States.

(c) The term "International Convention for Safety of Life at Sea" means the "International Convention for Safety of Life at Sea, 1948" or any similar international convention which comes into force and effect after ratification by the United States Senate.

(d) The term "Secretary" means the Secretary of the department in which the Coast Guard is operating. May 10, 1956, c. 258, § 1, 70 Stat. 151.

Historical Note

References in Text. The International Convention for Safety of Life at Sea, 1948, referred to in the text, was signed at London on June 10, 1948, and was ratified by the United States Senate on April 20, 1949 (see Senate Report No. 838, Sept. 26, 1951, to accompany H.R. 5013, 82nd Cong.). The "International Regulations for Preventing Collisions at Sea, 1948", approved by the 1948 London conference, which were adopted by Congress by Act Oct. 11, 1951, c. 495, § 6, 65 Stat. 407, and are set out as section 144 et seq. of Title 33, Navigation and Navigable Waters, became effective Jan. 1, 1954 under Proc. No. 3080, Aug. 30, 1953, 18 F.R. 4983, set out as a note under section 143 of said Title 33. For enforcement of the International Convention for Safety of Life

at Sea, see Ex.Ord.No. 10402, set out as a note under section 143 of said Title 33.

Effective Date. Section 8 of Act May 10, 1956, as amended by Pub.L. 85-210, Aug. 28, 1957, 71 Stat. 486, provided that: "This Act [enacting sections 390-390g, amending sections 404 and 526f, and repealing section 520 of this title] shall become effective on June 1, 1958, or on the first day of the sixth month following the prescription of rules and regulations by the Secretary under section 3 [section 390b of this title], hereof, whichever is later."

Legislative History: For legislative history and purpose of Act May 10, 1956, see 1956 U.S.Code Cong. and Adm.News, p. 2527.

Notes of Decisions

Computation of tonnage 2 Vessels within section 1

1. Vessels within section

Former section 520 of this title did not relate to steam vessels employed in inland navigation. *Beck v. Johnson* (C.C. Ky.1909) 169 F. 154.

2. Computation of tonnage

The superstructure of an inclosed cabin on a gasoline boat, which cabin extended from the bottom of the boat above the deck, having windows in the superstructure, but which added nothing to the carrying capacity of the boat in either passengers or cargo, was not a "closed-in space * * * available for cargo or

stores or for the berthing or accommodation of passengers or crew," which under section 77 of this title, was to be added to the space below deck in computing the vessel's tonnage, and where with-

out it the boat was not over fifteen tons burden she was not subject to inspection, etc., under the provisions of former section 520 of this title. The Messenger (Ind.1909) 168 F. 908, 94 C.C.A. 312.

§ 390a. Inspection—Frequency and requirements

(a) The Secretary shall, at least once every three years, cause to be inspected each passenger-carrying vessel, and shall satisfy himself that every such vessel (1) is of a structure suitable for the service in which it is to be employed; (2) is equipped with the proper appliances for lifesaving and fire protection in accordance with applicable laws, or rules and regulations prescribed by him; (3) has suitable accommodations for passengers and the crew; and (4) is in a condition to warrant the belief that it may be used, operated, and navigated with safety to life in the proposed service and that all applicable requirements of marine safety statutes and regulations thereunder are faithfully complied with.

Fees for inspection and certificate, license, or permit

(b) The Secretary may prescribe reasonable fees or charges for (1) any inspection made and (2) any certificate, license, or permit issued pursuant to sections 390–390g, 404, and 526f of this title or the rules and regulations established hereunder. May 10, 1956, c. 258, § 2, 70 Stat. 152.

Historical Note

Effective Date. Section as effective on June 1, 1958, or on the first day of the sixth month following the prescription of rules and regulations by the Secre-

tary under section 390b of this title, whichever is later, see note set out under section 390 of this title.

Notes of Decisions

1. Navigation

There was nothing in former section 520 of this title which forbade the owner of a vessel of the character described therein from navigating it without a li-

cense or certificate of inspection nor from navigating it before it has been inspected. U. S. v. Nash, D.C.Ky.1901, 111 F. 525.

§ 390b. Rules and regulations

In order to secure effective provision against hazard to life created by passenger-carrying vessels and to carry out in the most effective manner the provisions of sections 390–390g, 404, and 526f of this title, the Secretary shall prescribe such rules and regulations as may be necessary with respect to design, construction, alteration, or repair of such vessels, including the superstructures, hulls, accommodations for passengers and crew, fittings, equipment, appliances, propulsive machinery, auxiliary machinery, and boilers; with respect to all materials used in construction, alteration, or repair of such vessels including the fire prevention and fire retardant char-

acteristics of such materials; with respect to equipment and appliances for lifesaving and fire protection; with respect to the operation of such vessels, including the waters in which they may be navigated and the number of passengers which they may carry; with respect to the requirements of the manning of such vessels and the duties and qualifications of the operators and crews thereof; and with respect to the inspection of any or all the foregoing. May 10, 1956, c. 258, § 3, 70 Stat. 152.

Historical Note

Effective Date. Section as effective on June 1, 1958, or on the first day of the sixth month following the prescription of rules and regulations by the Secre-

tary under this section, whichever is later, see note set out under section 390 of this title.

Notes of Decisions

1. Lookout

The failure to keep a lookout is a violation of the general rule to prevent collisions between vessels, and nothing can exonerate a vessel from such failure, unless it should appear that the collision would have occurred notwithstanding such failure, and the proper

place for such lookout is such a position as will afford a view over the bow of the vessel, where the best opportunity is afforded for observation of approaching vessels, and this rule is undoubtedly as applicable to the boats of the motor class as to ocean steam vessels. *Brindle v. The Eagle*, 1922, 6 Alaska 503.

§ 390c. Certificate of inspection—Issuance prerequisite to operation; exception

(a) No passenger-carrying vessel shall be operated or navigated until a certificate of inspection in such form as may be prescribed by the regulations promulgated by the Secretary under the authority of sections 390–390g, 404, and 526f of this title, has been issued to the vessel indicating that the vessel is in compliance with the provisions of said sections, and the rules and regulations established hereunder; except that when a foreign passenger-carrying vessel belongs to a nation which is signatory to the International Convention for Safety of Life at Sea, a valid safety certificate issued to the vessel pursuant to the Convention may be accepted in lieu of the required certificate of inspection.

Compliance

(b) Any passenger-carrying vessel to which a valid certificate of inspection has been issued pursuant to this section shall during the tenure of the certificate be in full compliance with the terms of the certificate.

Surrender; withdrawal for noncompliance

(c) A certificate of inspection issued pursuant to this section may at any time be voluntarily surrendered and shall be withdrawn and suspended or revoked for noncompliance with any applicable requirements of sections 390–390g, 404, and 526f of this title or regulations thereunder. May 10, 1956, c. 258, § 4, 70 Stat. 153.

Historical Note

References in Text. The International Convention for Safety of Life at Sea, 1948, referred to in the text, was signed at London on June 10, 1948, and was ratified by the United States Senate on April 20, 1949 (see Senate Report No. 838, Sept. 26, 1951, to accompany H.R. 5613, 82nd Cong.). The "International Regulations for Preventing Collisions at Sea, 1948", approved by the 1948 London conference, which were adopted by Congress by Act Oct. 11, 1951, c. 495, § 6, 65 Stat. 407, and are set out as section 144 et seq. of Title 33, Navigation and Navigable Waters, became effective Jan. 1,

1954 under Proc. No. 3030, Aug. 30, 1953, 18 F.R. 4983, set out as a note under section 143 of said Title 33. For enforcement of the International Convention for Safety of Life at Sea, see Ex. Ord.No. 10402, set out as a note under section 143 of said Title 33.

Effective Date. Section as effective on June 1, 1958, or on the first day of the sixth month following the prescription of rules and regulations by the Secretary under section 390b of this title, whichever is later, see note set out under section 390 of this title.

§ 390d. Violations; penalty; liability; jurisdiction

Any owner, master, or person in charge of any vessel subject to sections 390-390g, 404, and 526f of this title who violates the provisions of said sections, or the rules and regulations established hereunder, shall be liable to the United States in a penalty of not more than \$1,000 for each such violation, for which sum the passenger-carrying vessel shall be liable and may be seized and proceeded against by way of libel in any district court of the United States having jurisdiction of the violation. May 10, 1956, c. 258, § 5, 70 Stat. 153.

Historical Note

Effective Date. Section as effective on June 1, 1958, or on the first day of the sixth month following the prescription of rules and regulations by the Secretary

under section 390b of this title, whichever is later, see note set out under section 390 of this title.

Notes of Decisions**Licensed engineer 1
Seizure and forfeiture****1. Licensed engineer**

It is a criminal offense, punishable by indictment, to operate a gasoline launch of over 15 tons burden in the carrying of passengers or freight for hire without a licensed engineer. U. S. v. Nash, D.C.Ky.1901, 111 F. 525.

A person who ran a vessel within the description of former section 520 of this title without a licensed engineer was liable to the penalty provided by section

498 of this title, notwithstanding the provisions of sections 494 and 497 of this title. *Id.*

2. Seizure and forfeiture

Former section 520 of this title did not have the effect of extending to the vessels specified the provisions of section 497 of this title, imposing penalties upon "any vessel propelled in whole or in part by steam" which shall be navigated without complying with the terms of chapters 14 and 15 of this title, and such a vessel was not subject to seizure and forfeiture thereunder. *The Ben R.*, Ky.1904, 134 F. 784, 67 C.C.A. 290.

§ 390e. International Convention requirements unaffected

Nothing contained in sections 390–390g, 404, and 526f of this title shall be deemed to amend, alter, or otherwise affect the requirements of any International Convention for Safety of Life at Sea. May 10, 1956, c. 258, § 7, 70 Stat. 154.

Historical Note

References in Text. The International Convention for Safety of Life at Sea, 1948, referred to in the text, was signed at London on June 10, 1948, and was ratified by the United States Senate on April 20, 1949 (see Senate Report No. 838, Sept. 26, 1951, to accompany H.R. 5013, 82nd Cong.). The "International Regulations for Preventing Collisions at Sea, 1948", approved by the 1948 London conference, which were adopted by Congress by Act Oct. 11, 1951, c. 495, § 6, 65 Stat. 407, and are set out as section 144 et seq. of Title 33, Navigation and Navigable Waters, became effective Jan.

1, 1954 under Proc. No. 3030, Aug. 30, 1953, 18 F.R. 4983, set out as a note under section 143 of said Title 33. For enforcement of the International Convention for Safety of Life at Sea, see Ex.Ord.No.10402, set out as a note under section 143 of said Title 33.

Effective Date. Section as effective on June 1, 1958, or on the first day of the sixth month following the prescription of rules and regulations by the Secretary under section 390b of this title, whichever is later, see note set out under section 390 of this title.

§ 390f. Appropriation

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of sections 390–390g, 404, and 526f of this title. May 10, 1956, c. 258, § 9, 70 Stat. 154.

Historical Note

Effective Date. Section as effective on June 1, 1958, or on the first day of the sixth month following the prescription of rules and regulations by the Secre-

tary under section 390b of this title, whichever is later, see note set out under section 390 of this title.

§ 390g. Separability of provisions

If any provisions of sections 390–390g, 404, and 526f of this title, or the application of any provision of said sections to any person or circumstance is held invalid, the application of such provision to other persons or circumstances, and the remainder of said sections, shall not be affected thereby. May 10, 1956, c. 258, § 10, 70 Stat. 154.

Historical Note

Effective Date. Section as effective on June 1, 1958, or on the first day of the sixth month following the prescription of rules and regulations by the Secre-

tary under section 390b of this title, whichever is later, see note set out under section 390 of this title.

MODE, MANNER, AND EXTENT OF INSPECTION;
CERTIFICATES; RECORDS

§ 391. Hulls and equipment—Steam vessels carrying passengers; annual inspection

(a) The head of the department in which the Coast Guard is operating shall require the Coast Guard to inspect before the same shall be put into service, and at least once in every year thereafter, the hull of every steam vessel carrying passengers; to determine to its satisfaction that every such vessel so submitted to inspection is of a structure suitable for the service in which she is to be employed, has suitable accommodations for passengers and the crew, and is in a condition to warrant the belief that she may be used in navigation, with safety to life, and that the vessel is in full compliance with the applicable requirements of this title or Acts amendatory or supplementary thereto and regulations thereunder; and if deemed expedient, to direct the vessel to be put in motion or to adopt any other suitable means to test her sufficiency and that of her equipment.

Steam vessels not carrying passengers; biennial inspection

(b) The head of the department in which the Coast Guard is operating shall require the Coast Guard to inspect before the same shall be put into service, and at least once in every two years thereafter, the hull of each steam vessel, not carrying passengers; to determine to its satisfaction that every such vessel so submitted to inspection is of a structure suitable for the service in which she is to be employed, has suitable accommodations for the crew, and is in a condition to warrant the belief that she may be used in navigation, with safety to life, and that the vessel is in full compliance with the applicable requirements of this title or Acts amendatory or supplementary thereto and regulations thereunder; and if deemed expedient, to direct the vessel to be put in motion or to adopt any other suitable means to test her sufficiency and that of her equipment.

Sail vessels over 700 tons or other vessels and barges over 100 tons carrying passengers; annual inspection

(c) The head of the department in which the Coast Guard is operating shall require the Coast Guard to inspect before the same shall be put into service, and at least once in every year thereafter, the hull of each sail vessel of over seven hundred gross tons carrying passengers for hire and all other vessels and barges of over one hundred gross tons carrying passengers for hire; and to determine to its satisfaction that every such vessel so submitted to inspection is of a structure suitable for the service in which she is to be employed, has suitable accommodations for the passengers and crew, and is in condition to warrant the belief that she may be used in navigation with safety to life.

Requirements and enforcement; appeals

(d) Whenever it is found on board any vessel subject to the provisions of this title, or any Acts amendatory or supplementary thereto, that any equipment, machinery, apparatus, or appliances do not conform to the requirements of law or regulations promulgated thereunder, the owner or master of said vessel shall be required to place the same in proper condition; and if there shall be found on board any such vessel any life preserver or fire hose so defective as to be incapable of repair, the owner or master shall be required to destroy the same in the presence of an official designated by the head of the department in which the Coast Guard is operating. In any of the foregoing cases the requirements may be enforced by revoking the certificate of said vessel, and by refusing to issue a new certificate until the requirements have been fully complied with. In any case where the head of the department in which the Coast Guard is operating has delegated to a Coast Guard official the authority to enforce the said requirements by revocation of certificates of inspection, the action of said Coast Guard official may be reversed, modified, or set aside by the head of the department in which the Coast Guard is operating on proper appeal by the owner or master of said vessel. Appeals shall be made to the head of the department in which the Coast Guard is operating within thirty days after the final action of the aforesaid Coast Guard official.

Exemptions

(e) Vessels subject to inspection under this title or Acts amendatory or supplementary thereto while laid up and dismantled and out of commission may, by regulations established by the head of the department in which the Coast Guard is operating, be exempted from any or all inspection under this section and sections 392, 404, and 405 of this title. R.S. § 4417; Dec. 21, 1898, c. 29, § 4, 30 Stat. 765; Mar. 3, 1905, c. 1454, § 1, 33 Stat. 1023; Mar. 4, 1913, c. 141, § 1, 37 Stat. 736; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097; June 4, 1956, c. 350, § 1, 70 Stat. 223.

Historical Note

Derivation. Act Feb. 28, 1871, c. 100, § 11, 16 Stat. 443.

References in Text. The words "this title" referred to in the text, in the expression "under this title or Acts amendatory or supplementary thereto", mean title 52 of the Revised Statutes. For distribution of title 52, sections 4399-4500, of the Revised Statutes, of which this section is a part, see note under section 170 of this title.

Codification. The section, as enacted in the Revised Statutes, was as follows: "The local inspectors shall, once in every year, at least, upon application in writing of the master, or owner, care-

fully inspect the hull of each steam-vessel within their respective districts, and shall satisfy themselves that every such vessel so submitted to their inspection is of a structure suitable for the service in which she is to be employed, has suitable accommodations for passengers and the crew, and is in a condition to warrant the belief that she may be used in navigation as a steamer, with safety to life, and that all the requirements of law in regard to fires, boats, pumps, hose, life-preservers, floats, anchors, cables, and other things, are faithfully complied with; and if they deem it expedient, they may direct the vessel to

be put in motion, and may adopt any other suitable means to test her sufficiency and that of her equipment."

It was amended, by Act Dec. 21, 1898, by adding thereto the following words: "The local inspectors shall, once in every year, at least, or upon application in writing of the master or owner, carefully inspect the hull of each sail vessel of over seven hundred tons and all other vessels and barges of over one hundred tons burden carrying passengers for hire within their respective districts, and shall satisfy themselves that every such vessel so submitted to their inspection is of a structure suitable for the service in which she is to be employed, has suitable accommodations for the crew, and is in a condition to warrant the belief that she may be used in navigation with safety to life."

It was further amended, by Act Mar. 3, 1905, which amendment consisted principally, in the omission of clauses of the original section and of the provision added by said previous amendment, providing for inspection "upon application in writing of the master or owner," and in the addition, at the end of the section as previously amended, of the proviso beginning with the words, "Provided, That vessels while laid up and dismantled," etc., and of the several provisions following said proviso, to the end of the section.

Upon incorporation into the Code, the words "Secretary of Commerce" were substituted for "Secretary of Commerce and Labor." See note under section 362 of this title.

The former provision of this section providing for appeal from the decisions of the local inspectors to the supervising inspector within ten days was rendered obsolete by 1946 Reorg. Plan No. 3, which abolished both offices and transferred the functions of both to the Commandant of the Coast Guard. The Coast Guard has authority, under its general regulatory powers, to provide for appeals and appellate procedure.

1956 Amendment. Act June 4, 1956, provided for biennial rather than annual

inspection of hulls of cargo vessels, and amended section generally, dividing it into subsecs. (a)-(e), and changing language to reflect the transfer of Coast Guard functions to the head of the department in which the Coast Guard is operating and to make certain other technical changes.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

References to local inspectors and assistant inspectors were changed to "Coast Guard" or "Coast Guard officials", "within their respective districts", words "in the performance of his duty" were omitted, and "Commandant of the Coast Guard" was substituted for "board of supervising inspectors with the approval of the Secretary of Commerce", on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Legislative History: For legislative history and purpose of Act June 4, 1956, see 1956 U.S.Code Cong. and Adm.News, p. 2641.

Cross References

Section as applicable to foreign private steam vessels, see section 362 of this title.

Notes of Decisions

Application for inspection 2
Equipment 4
Indictment 5
Trial run 3
Vessels within section 1

1. Vessels within section

Steam vessels belonging to the state of Maryland, and used by its officers in enforcing the state fishery laws, are required to have their boilers and hulls

inspected by the United States steamboat inspectors. The Governor Robert McLane v. U. S., C.C.Md.1888, 35 F. 928.

The obligation to apply for inspection does not attach until the vessel is completed, or is ready to engage in business. The Steamboat Joshua Levisness, D.C. N.Y.1878, 9 Ben. 339, 13 Fed.Cas.No.7,549.

The necessity for inspecting exists as well where the vessel engages in the business of carrying passengers for a single occasion and outside of her regular business, as when her daily occupation is the carrying of passengers, and such a vessel is a vessel employed in the service of carrying passengers within the meaning of this section. The Steamboat Jacob G. Neafie, D.C.N.Y.1875, 8 Ben. 251, 13 Fed.Cas.No.7,156.

2. Application for inspection

The fact that the owners of a vessel did not apply for an inspection after a slight injury, which was not shown to have impaired her hull or machinery, and when she had been inspected but three months before, was not a failure to comply with the inspection law. The Longfellow, Ohio 1900, 104 F. 360, 45 C.C.A. 379.

It was the duty of the master or owner of a steam vessel engaged in carrying passengers for hire, whether regularly

or otherwise, to make a written application for her inspection, under this section. The Jacob G. Neafie, D.C.N.Y.1875, Fed.Cas.No.7,156.

3. Trial run

A voyage from the place where the vessel is constructed to another place, by direction of the inspectors, to enable her to be inspected, is not a violation of the navigation laws. The Joshua Levisness, D.C.N.Y.1878, Fed.Cas.No.7,549.

4. Equipment

Appropriate officer of the Coast Guard had right to refuse to issue a certificate of inspection to owner of vessel of about 98 gross tons, propelled by an internal combustion engine, unless the vessel was equipped with a lifeboat and certain life-saving equipment. Ace Waterways v. Fleming, D.C.N.Y.1951, 98 F.Supp. 666.

5. Indictment

An indictment for conspiracy to defraud the United States by weighting life preservers, so that they would pass the inspection required by this section, need not allege that the vessel on which the life preservers were to be used was not a public vessel, which was excepted from the operation of this section by section 362 of this title. U. S. v. Stone, D.C.N.J.1905, 135 F. 392.

§ 391a. Vessels having on board inflammable or combustible liquid cargo in bulk

(1) Vessels included

All vessels, regardless of tonnage, size, or manner of propulsion, and whether self-propelled or not, and whether carrying freight or passengers for hire or not, that shall have on board any inflammable or combustible liquid cargo in bulk, except public vessels owned by the United States, other than those engaged in commercial service, shall be considered steam vessels for the purposes of title 52 of the Revised Statutes and shall be subject to the provisions thereof: *Provided*, That this section shall not apply to vessels having on board only inflammable or combustible liquid for use as fuel or stores or to vessels carrying liquid cargo only in drums, barrels, or other packages.

(2) Rules and regulations for handling liquid cargo

In order to secure effective provision against the hazards of life and property created by the vessels to which this section applies, the Commandant of the Coast Guard shall establish such additional rules and regulations as may be necessary with respect to the design and construction, alteration, or repair of such vessels, including the su-

perstructures, hulls, places for stowing and carrying such liquid cargo, fittings, equipment, appliances, propulsive machinery, auxiliary machinery, and boilers thereof; and with respect to all materials used in such construction, alteration, or repair; and with respect to the handling and stowage of such liquid cargo; the manner of such handling or stowage, and the machinery and appliances used in such handling and stowage; and with respect to equipment and appliances for life-saving and fire protection; and with respect to the operation of such vessels; and with respect to the requirements of the manning of such vessels and the duties and qualifications of the officers and crews thereof; and with respect to the inspection of all the foregoing. In establishing such rules and regulations the Commandant of the Coast Guard may adopt rules of the American Bureau of Shipping or similar American classification society for classed vessels insofar as such rules pertain to the efficiency of hulls and the reliability of machinery of vessels to which this section applies. In establishing such rules and regulations, the Commandant of the Coast Guard shall give due consideration to the kinds and grades of such liquid cargo permitted to be on board such vessel.

(3) Hearing before approval of rules

Before any rules and regulations, or any alteration, amendment, or repeal thereof, are approved by the Commandant of the Coast Guard under the provisions of this section, except in an emergency, the said Commandant shall publish such rules and regulations and hold hearings with respect thereto on such notice as he deems advisable under the circumstances.

(4) Certificate of inspection and permit required; time of indorsing permit; inspection; duration of permit; vessels of foreign nations; permit for prohibited materials

No vessel subject to the provisions of this section shall, after the effective date of the rules and regulations established hereunder, have on board such liquid cargo, until a certificate of inspection has been issued to such vessel in accordance with the provisions of title 52 of the Revised Statutes and until a permit has been endorsed on such certificate of inspection by the Coast Guard, indicating that such vessel is in compliance with the provisions of this section and the rules and regulations established hereunder, and showing the kinds and grades of such liquid cargo that such vessel may have on board or transport. Such permit shall not be endorsed by the Coast Guard on such certificate of inspection until such vessel has been inspected by the Coast Guard and found to be in compliance with the provisions of this section and the rules and regulations established hereunder. For the purpose of any such inspection approved plans and certificates of class of the American Bureau of Shipping or other recognized classification society for classed vessels may be accepted as evidence of the structural efficiency of the hull and the reliability of the machinery of such classed vessels except as far as existing law places definite responsibility on the Coast Guard. A permit issued

under the provisions of this section shall be valid for a period of time not to exceed the duration of the certificate of inspection on which such permit is endorsed, and shall be subject to revocation by the Coast Guard whenever it shall find that the vessel concerned does not comply with the conditions upon which such permit was issued: *Provided*, That the provisions of this subsection shall not apply to vessels of a foreign nation having on board a valid certificate of inspection recognized under law or treaty by the United States: *And provided further*, That no permit shall be issued under the provisions of this section authorizing the presence on board any vessel of any of the materials expressly prohibited from being thereon by subsection (3) of section 170 of this title.

(5) Shipping documents required on board; contents

Vessels subject to the provisions of this section shall have on board such shipping documents as may be prescribed by the Commandant of the Coast Guard indicating the kinds, grades, and approximate quantities of such liquid cargo, on board such vessel, the shippers and consignees thereof, and the location of the shipping and destination points.

(6) Number of officers and tankermen; certificate as tankerman; suspension or revocation of certificate

(a) In all cases where the certificate of inspection does not require at least two licensed officers, the Coast Guard shall enter in the permit issued to any vessel under the provisions of this section the number of the crew required to be certificated as tankermen.

(b) The Coast Guard shall issue to applicants certificates as tankerman, stating the kinds of liquid cargo the holder of such certificate is, in the judgment of the Coast Guard, qualified to handle aboard vessels with safety, upon satisfactory proof and examination, in form and manner prescribed by the Commandant of the Coast Guard, that the applicant is in good physical condition, that such applicant is trained in and capable efficiently to perform the necessary operations aboard vessels having such liquid cargo on board, and that the applicant fulfills the qualifications of tankerman as prescribed by the Commandant of the Coast Guard under the provisions of this section. Such certificates shall be subject to suspension or revocation on the same grounds and in the same manner and with like procedure as is provided in the case of suspension or revocation of licenses of officers under the provisions of section 239 of this title.

(7) Penalties

The owner, master, or person in charge of any vessel subject to the provisions of this section, or any or all of them, who shall violate the provisions of this section, or of the rules and regulations established hereunder, shall be subject to a fine of not more than \$1,000 or imprisonment for not more than one year, or both such fine and imprisonment.

(8) Effective date of rules and regulations

The rules and regulations to be established pursuant to this section shall become effective ninety days after their promulgation unless the Commandant of the Coast Guard shall for good cause fix a different time. R.S. 4417a as added June 23, 1936, c. 729, 49 Stat. 1889, and amended Oct. 9, 1940, c. 777, § 3, 54 Stat. 1028; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

References in Text. For distribution of title 52, sections 4392-4500, of the Revised Statutes, referred to in the text, of which this section is a part, see note under section 170 of this title.

1940 Amendment. Subsec. (2) amended by Act Oct. 9, 1940, by deleting proviso exempting common carriers subject to regulations by Interstate Commerce Commission.

Subsec. (4) amended by Act Oct. 9, 1940, by omitting a number of statutory references from the second proviso.

Effective Date and Separability of 1940 Amendment. Effective date and separability of Act Oct. 9, 1940, see note under section 170 of this title.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, re-

ferred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

References to the Board of Supervising Inspectors throughout section and to the Secretary of Commerce in subsecs. (3) and (8) were changed to Commandant of the Coast Guard, provisions for approval of regulations by the Secretary of Commerce were omitted, references to boards of local inspectors were changed to the Coast Guard, and in second sentence of subsec. (4) "inspected by the Coast Guard" was substituted for "inspected by such board of local inspectors, or by any other board or officer of the Bureau of Marine Inspection and Navigation designated by the Director thereof" and "Coast Guard" was substituted for "Bureau of Marine Inspection and Navigation" at end of sentence, on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Cross References

Appropriations, see section 170b of this title.

Crude petroleum carried in double bottom fuel tanks considered as only for use as fuel within subsec. (1) of this section, see section 467 of this title.

Explosives or other dangerous articles on vessels, regulation of carriage, see section 170 of this title.

Notes of Decisions

Construction 1
Defenses 4
Purpose 2
Regulations 3

1. Construction

This section authorizing Coast Guard to establish additional rules and regula-

tions for safety of vessels and providing penalties for violation thereof regardless of willfulness is quasi penal and should not be given an expansive interpretation, but should be limited to the situations specified by its terms. *Universe Tankships, Inc. v. Pyrate Tank Cleaners, Inc.*, D.C.N.Y. 1957, 152 F.Supp. 903.

2. Purpose

The purpose of this section, relating to inspection and certification of vessels, is to promote safety at sea. *Cargo Carriers v. Snyder*, D.C.D.C.1952, 104 F. Supp. 258, affirmed 206 F.2d 488, 93 U.S. App.D.C. 45.

3. Regulations

Where nonpropelled tank barge of 1892 tons and tug boat of 99 tons were constructed so that tug could be securely fitted into indented stern of barge and otherwise so integrated with barge that two units could function as self-propelled tank barge for shipment of inflammable liquid cargoes in bulk, Coast Guard officials acted reasonably and correctly in classifying tug and barge, when operated as single unit, as "single vessel" for purposes of inspection and certification. *Cargo Carriers, Inc. v. Humphrey*, C.A.1953, 206 F.2d 488, 93 U.S.App.D.C. 45.

Where tanker was having its petroleum tanks cleaned and gas-freed by professional tank cleaning company, Coast Guard regulation requiring all vessels with inflammable or combustible liquid cargo on board to have flame screens on when hatches are open was inapplicable, since vessel had already discharged its cargo. *Universe Tankships, Inc. v. Pyrate Tank Cleaners, Inc.*, D.C.N.Y.1957, 152 F.Supp. 903.

4. Defenses

Where shipowner engaged defendant, a professional tank cleaning company, to clean and gas-free tanks aboard ship, defendant, having agreed and undertaken to supervise freeing work in a safe and proper manner, could not, in shipowner's suit for damages arising from explosion, be permitted to set up its own neglect of that duty as a statutory fault on part of shipowner. *Universe Tankships, Inc. v. Pyrate Tank Cleaners, Inc.*, D.C.N.Y.1957, 152 F.Supp. 903.

§ 391b. Issuance of certain certificates by inspectors and assistants

Historical Note

Codification. Section, Act May 9, 1938, c. 189, 52 Stat. 343, authorized inspectors of hulls, inspectors of boilers and assistant inspectors to issue certain cer-

tificates. Such offices were abolished by 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097. See note under section 1 of this title.

§ 392. Boilers, unfired pressure vessels, and appurtenances; machinery and electrical equipment—Passenger vessels; annual inspection

(a) The head of the department in which the Coast Guard is operating shall require the Coast Guard to inspect, before the same shall be put into service and once at least in every year thereafter, the boilers, unfired pressure vessels, and appurtenances thereof, also the propelling and auxiliary machinery, electrical apparatus and equipment, of all passenger vessels subject to inspection.

Vessels other than passenger vessels; biennial inspection

(b) The head of the department in which the Coast Guard is operating also shall require the Coast Guard to inspect, before the same shall be put into service and at least once in every two years thereafter, the boilers, unfired pressure vessels, and appurtenances thereof, also the propelling and auxiliary machinery, electrical apparatus and equipment, of all vessels subject to inspection other than passenger vessels.

Examination for conformity

(c) The head of the department in which the Coast Guard is operating shall require the Coast Guard to determine to its satisfaction by thorough examination that the boilers, unfired pressure vessels, and appurtenances thereof, also the propelling and auxiliary machinery, electrical apparatus and equipment of all vessels which are subject to inspection under subsections (a) and (b) of this section are in conformity with law and the rules and regulations of the head of the department in which the Coast Guard is operating, and may be safely employed in the service proposed. No boiler, unfired pressure vessel, or appurtenances thereof shall be allowed to be used if constructed in whole or in part of defective material or which because of its form, design, workmanship, age, use, or for any other reason is unsafe.

Hydrostatic tests

(d) At each original inspection and at each annual or biennial inspection thereafter, whichever is applicable, all boilers, unfired pressure vessels, and main steam piping shall be subjected to hydrostatic tests or such other tests as may be prescribed by the head of the department in which the Coast Guard is operating. The ratio of the hydrostatic test to the maximum working pressure shall be determined by action of the head of the department in which the Coast Guard is operating. R.S. 4418; June 19, 1886, c. 421, § 14, 24 Stat. 82; Mar. 3, 1905, c. 1456, § 1, 33 Stat. 1027; June 13, 1933, c. 61, 48 Stat. 125; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097; June 4, 1956, c. 350, § 2, 70 Stat. 224.

Historical Note

Derivation. Act Feb. 28, 1871, c. 100, § 11, 16 Stat. 443.

Codification. The section, as enacted in the Revised Statutes, was as follows: "The local inspectors shall also inspect the boilers of all steam-vessels before the same shall be used, and once at least in every year thereafter. They shall subject all boilers to the hydrostatic pressure; and shall satisfy themselves by thorough examination that the boilers are well made, of good and suitable material; that the openings for the passage of water and steam, respectively, and all pipes and tubes exposed to heat, are of proper dimensions and free from obstruction; that the spaces between and around the flues are sufficient; that the flues are circular in form; that the fire-line of the furnace is at least two inches below the prescribed minimum waterline of the boilers; that the arrangement for delivering the feed-water is such that the boilers cannot be injured thereby; and that such boilers and machinery,

and the appurtenances, may be safely employed in the service proposed in the written application, without peril to life. They shall also satisfy themselves that the safety-valves are of suitable dimensions, sufficient in number, and well arranged; and that the weights of the safety-valves are properly adjusted, so as to allow no greater pressure in the boilers than the amount prescribed by the inspection certificate; that there is a sufficient number of gauge-cocks properly inserted, and to indicate the pressure of steam, suitable steam-registers that will correctly record each excess of steam carried above the prescribed limit and the highest point attained; and that there are reliable low-water gauges; and that the fusible metals are properly inserted so as to fuse by the heat of the furnace, whenever the water in the boilers falls below its prescribed limits; and that adequate and certain provision is made for an ample supply of water to feed the boilers at

all times, whether such vessel is in motion or not, so that in high-pressure boilers the water shall not be less than four inches above the top of the flues; and that means for blowing out are provided, so as to thoroughly remove the mud and sediment from all parts of the boilers, when they are under pressure of steam. In subjecting to the hydrostatic tests boilers usually designated and known as high-pressure boilers, the inspectors shall assume one hundred and ten pounds to the square inch, as the maximum pressure allowable as a working-power for a new boiler of forty-two inches in diameter, made in the best manner, of inspected iron plates, one-fourth of an inch thick, and of a quality required by law, and shall rate the working-power of all high-pressure boilers, whether old or new, according to their strength, compared with this standard; and in all cases the test applied shall exceed the working-power allowed, in the ratio of one hundred and sixty-five to one hundred and ten. In subjecting to the hydrostatic tests boilers usually designated and known as low-pressure boilers, the inspectors shall allow as a working-power for each new boiler, a pressure of only three-fourths the number of pounds to the square inch to which it has been subjected by the hydrostatic test, and for which it has been found to be sufficient. Should the inspectors be of the opinion that any boiler, by reason of its construction or material, will not safely allow so high a working pressure as is above described, they may, for reasons to be stated specially in their certificate, fix the working-pressure of such boiler at less than three-fourths of the test-pressure. All boilers used on steam-vessels and constructed of iron or steel plates, inspected under the provisions of section forty-four hundred and thirty, shall be subjected to a hydrostatic test, in the ratio of one hundred and fifty pounds to the square inch to one hundred pounds to the square inch of the working steam-power allowed. No boiler or pipe, nor any of the connections therewith, shall be approved, which is made, in whole or in part, of bad material, or is unsafe in its form, or dangerous from defective workmanship, age, use, or other cause."

It was amended by Act June 19, 1886, by striking out, after the words "that there is a sufficient number of gauges properly inserted," the words "and, to indicate the pressure of steam,

suitable steam-registers that will correctly record each excess of steam carried above the prescribed limit and the highest point attained," and inserting in lieu thereof the words "and suitable steam gauges to indicate the pressure of steam."

It was further amended generally by Act Mar. 3, 1905.

1956 Amendment. Act June 4, 1956, provided for a biennial rather than annual inspection for cargo vessels, and amended section generally, dividing it into subsecs. (a)-(d), and changing its language to reflect the transfer of Coast Guard functions to the head of the department in which the Coast Guard is operating and to make certain other technical changes.

1933 Amendment. Act June 13, 1933, amended section generally to extend inspection to unfired pressure vessels, appurtenances, propelling and auxiliary machinery, and electrical apparatus and equipment, among other changes.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

References to local inspectors were changed to "Coast Guard" and "Commandant of the Coast Guard" was substituted for "board of supervising inspectors" on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Cross References

Exemption of vessels laid up and dismantled, see section 391(e) of this title.

Inspection of foreign vessels admitted to American registry, see section 386 of this title.

Section as applicable to foreign private steam vessels, see section 362 of this title.

Notes of Decisions

Penalty, recovery 6

Repairs and replacement of parts 4

State inspection 1

Steam registers 3

Subsequent inspections 5

Vessels within section 3

Steam registers used on vessels propelled by steam, in order to have been the subject of approval under section 393 of this title, must have been of a description which satisfied the requirements of this section and said section 393 of this title. 1886, 18 Op.Att'y.Gen.

1. State inspection

The inspection of boilers used solely for loading and unloading and weighing anchor on barges or lighters, used exclusively on tide water, is not within the exclusive jurisdiction of Congress, and hence, unless Congress has legislated relative thereto, such boilers are subject to St.Mass.1907, c. 465, as amended by St.Mass.1909, c. 393, § 1, requiring the inspection of all steam boilers, except those under the jurisdiction of the United States. *Commonwealth v. Breakwater Co.*, 1913, 100 N.E. 1034, 214 Mass. 10.

2. Vessels within section

Steam vessels belonging to the state of Maryland, and used by its officers in enforcing the state fishery laws are required to have their boilers and hulls inspected by the United States steamboat inspectors. *The Governor Robert McLane v. U. S.*, C.C.Md.1888, 35 F. 926.

3. Steam registers

A vessel using a steam register adopted by the supervising inspectors was not liable to seizure under Act Feb. 28, 1871, although the same was defective and insufficient. *The Lac La Belle*, D.C.Wis. 1872, Fed.Cas.No.7963.

4. Repairs and replacement of parts

It is as much the duty of an owner of a steamship to cause an inspection of a boiler which has been repaired in a substantial part, as to cause an inspection of a new boiler, before using the same. *The Annie Faxon*, Wash.1896, 75 F. 312, 21 C.C.A. 366.

The failure to have the boiler tested as a new boiler, after one sheet had been condemned and had been replaced by a new sheet, is negligence. *Dunlap v. The Reliance*, C.C.Ga.1880, 2 F. 249. See, also, *Posey v. Scoville*, C.C.La.1881, 10 F. 140.

5. Subsequent inspections

Under Act July 7, 1838, more than six months might not elapse after one examination of a steamboat's boilers before another was made. *Virginia & M. Steam Nav. Co. v. U. S.*, C.C.Md.1840, Fed.Cas. No.16,973.

6. Penalty, recovery

The penalty imposed by Act July 7, 1838, for failure to have a steamboat's boilers inspected, could not have been recovered from the owners by a libel in admiralty. *Virginia & M. Steam Nav. Co. v. U. S.*, C.C.Md.1840, Fed.Cas.No.16,973.

§ 393. Control of safety valves and steam gauges

One of the safety valves may, if in the opinion of the Coast Guard it is necessary to do so, and the steam gauges shall, be taken wholly from the control of all persons engaged in navigating such vessel and secured by the Coast Guard. R.S. § 4419; June 19, 1886, c. 421, § 14, 24 Stat. 82; 1946 Reorg.Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Derivation. Act Feb. 28, 1871, c. 100, § 11, 16 Stat. 443.

Codification. "Steam gauges" were substituted for "steam registers" to conform to amendment of R.S. § 4418 by Act June 19, 1886. See note under section 392 of this title.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive

Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

"Coast Guard" was substituted for "local inspectors" on authority of 1946 Reorg.No.3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Notes of Decisions

Control 1
Requisites 2

1. Control

The terms "persons engaged in navigating the vessel" comprehend the officers and crew, those who are in the service of the vessel and employed in its management, the working of its machinery, etc., during the voyage. (1886) 18 Op.Att'y.Gen. 365.

The register was not only to have been taken from the control of all persons so employed, but to have been secured from such control by the inspectors. Id.

2. Requisites

Steam registers, used on vessels propelled by steam, in order to have been the subject of approval, must have been of a description which satisfied the requirements of both this section and section 392 of this title. (1886) 18 Op. Atty.Gen. 365.

§ 394. Amount of steam pressure allowed freight boats on Mississippi

Historical Note

Codification. Section, R.S. § 4420; Act Feb. 27, 1877, c. 9, § 1, 19 Stat. 251, is now covered by section 292 of this title.

§ 395. Seagoing barges; hulls and equipment—Annual inspection of barges over 100 tons carrying passengers

(a) The head of the department in which the Coast Guard is operating shall require the Coast Guard to inspect, before the same shall be put into service and at least once in every year thereafter, the hull and equipment of every seagoing barge of one hundred gross tons or over carrying passengers; and to determine to its

satisfaction that such barge is of a structure suitable for the service in which she is to be employed, has suitable accommodations for the crew and passengers, and is in a condition to warrant the belief that she may be used in navigation with safety to life.

**Biennial inspection of barges over 100 tons
not carrying passengers**

(b) The head of the department in which the Coast Guard is operating also shall require the Coast Guard to inspect, before the same shall be put into service and at least once in every two years thereafter, the hull and equipment of every seagoing barge of one hundred gross tons or over, not carrying passengers; and to determine to its satisfaction that such barge is of a structure suitable for the service in which she is to be employed, has suitable accommodations for the crew, if manned, and is in a condition to warrant the belief that she may be used in navigation with safety to life.

Certificate of inspection

(c) Upon the satisfactory completion of the inspection authorized herein, a certificate of inspection shall be issued in the manner and for the purposes prescribed in sections 399 and 400 of this title. May 28, 1908, c. 212, § 10, 35 Stat. 428; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097; June 4, 1956, c. 350, § 3, 70 Stat. 225.

Historical Note

1956 Amendment. Act June 4, 1956, provided for biennial rather than annual inspection of hulls and equipment of barges not carrying passengers, divided it into subsecs. (a)-(c), and amended section generally, changing its language to reflect the transfer of Coast Guard functions to the head of the department in which the Coast Guard is operating and to make certain other technical changes.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Execu-

tive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

"Coast Guard" was substituted for "local inspectors of steamboats", "itself" for "themselves" and "It" for "they" on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Legislative History: For legislative history and purpose of Act June 4, 1956, see 1956 U.S. Code Cong. and Adm. News, p. 2641.

Notes of Decisions

Barges within section 4
Burden of proof 7
Duties of inspectors 3

Equipment 5
Evidence 3
Liability for violation 6

Mandamus 9

Regulation, reasonableness of 2
State regulation 1

1. State regulation

Federal inspection of barge used for dance hall purposes which was neither a steam vessel nor a sailing vessel, and the issuance of a certificate permitting barge to navigate waters of Elliott Bay and Lake Washington conferred no rights violated by fire marshal of city of Seattle in refusing to permit persons to board such barge on the ground that it was unsafe and not in compliance with fire ordinance. *Ringler v. Laing* (D.C. Wash.1927) 21 F.2d 794.

Where fire marshal prevented persons from boarding barge used as dance hall, but did not prevent navigation of the barge authorized by certificate of federal inspectors, tort of such marshal, if any, was not a "marine tort." *Id.*

This section excluded local regulations of seagoing dredger barges. *United Dredging Co. v. Los Angeles* (D.C.Cal. 1926) 10 F.2d 239.

Whether a barge, having no means of self-propulsion, is a seagoing barge so as to exclude state inspection, is a question for the jury. *Commonwealth v. Breakwater Co.*, 1913, 100 N.E. 1034, 214 Mass. 10.

2. Regulations, reasonableness of

The requirement that a seagoing barge of 100 gross tons or more carrying passengers shall have sufficient number of transverse water-tight bulkheads fitted so that barge will remain afloat with positive stability if any one main compartment is flooded is not arbitrary but is a valid regulation. *Carr v. Hermosa Amusement Corporation*, C.C.A.Cal.1943, 137 F.2d 983, certiorari denied 64 S.Ct. 520, 321 U.S. 764, 88 L.Ed. 1060.

3. Duties of inspectors

Only federal local inspectors can perform duties imposed by this section and sections 396 and 397 of this title, relating to structure and equipment of seagoing barges of 100 gross tons or more. *Carr v. Hermosa Amusement Corporation*, C.C.A.Cal.1943, 137 F.2d 983, certiorari denied 64 S.Ct. 520, 321 U.S. 764, 88 L.Ed. 1060.

4. Barges within section

Where Commandant of Coast Guard was not party to suit in federal district court and would not be subject to such

suit, declaratory judgment of that court against Collector of Customs that shipowner's vessel was not subject to inspection by United States Coast Guard would not protect shipowner against inspection by Coast Guard, nor could such declaratory judgment be conclusive in subsequent suit against Commandant of Coast Guard. *Longview Tugboat Co. v. Jameson*, C.A.Or.1955, 218 F.2d 547.

An ocean-going barge of more than 100 tons navigating the Pacific Ocean and carrying fishermen and others is required to comply with requirements of federal local inspectors as to structure, her command by a licensed master, and other matters. *Carr v. Hermosa Amusement Corporation*, C.C.A.Cal.1943, 137 F.2d 983, certiorari denied 64 S.Ct. 520, 321 U.S. 764, 88 L.Ed. 1060.

A seagoing ocean barge of more than 100 gross tons carrying passengers is subject to the jurisdiction of local federal inspectors who have power to require sufficient transverse watertight bulkheads fitted so that barge will remain afloat with positive stability if any one main compartment is flooded. *Id.*

A navigable seagoing barge, having been converted from a self-propelling vessel to barge carrying fishermen, but retaining her steering apparatus and her hull lines, which had been anchored at bay for period of upward of two years for use by fishermen, is "at sea" and with her movements through the tidal and other currents and in the rise and fall of the tide and in the surge of swell or sea, controlled by her anchor chains, is being "navigated", so as to require a certificate of inspection of local inspectors of steamboats. *U. S. v. Monstad*, C.C.A.Cal.1943, 134 F.2d 986.

Large dredging barge was "vessel" and "seagoing barge," subject only to federal inspection. *City of Los Angeles v. United Dredging Co.*, (C.C.A.Cal.1926) 14 F.2d 364.

A "seagoing" barge is one which may be expected, with fair reason, to ride out the ordinary perils of the sea, and which, in fact, does go to sea, even though it has no means of self-propulsion. *Commonwealth v. Breakwater Co.* (1913) 100 N.E. 1034, 214 Mass. 10.

Barge or lighter having no means of self-propulsion was a barge within this section. *Id.*

5. Equipment

The equipment of seagoing barges, which steamboat inspectors are required to inspect, is not limited to the appliances which barges are required to carry

by section 396 of this title, but includes a steam boiler used once for loading and unloading and weighing anchor. *Commonwealth v. Breakwater Co.* (1913) 100 N.E. 1034, 214 Mass. 10.

6. Liability for violation

The failure of anchored passenger carrying seagoing barge of more than 100 gross tons to have transverse bulkheads as required by regulation does not make barge at fault for collision, since bulkhead requirement is only to protect lives after collision. *Carr v. Hermosa Amusement Corporation*, C.C.A.Cal.1943, 137 F.2d 983, certiorari denied, 64 S.Ct. 520, 321 U.S. 764, 88 L.Ed. 1060.

Where claimants for loss of lives and personal effects did not appeal from order holding barge not liable to them, claimants have no interest in liability of barge to steamship, and failure of steamship to summon them or obtain a severance on appeal from order holding barge not liable to steamship is not prejudicial to the barge. *Id.*

7. Burden of proof

Burden is on seagoing barge of over 100 tons carrying passengers to show that failure to have a licensed master in command and transverse bulkheads, as required by regulation, not only did not contribute, but could not have contributed, to personal injuries, loss of life and personal property following collision. *Carr v. Hermosa Amusement Corporation*, C.C.A.Cal.1943, 137 F.2d 983, certiorari denied 64 S.Ct. 520, 321 U.S. 764, 88 L.Ed. 1060.

8. Evidence

On petitions by owner of tug and barges for exoneration from liability or for limitation of liability for damages for loss of government examination boat with which two of the barges collided when a sudden squall with wind of about 25 miles an hour struck the barges and tug, evidence established the liability of barges for sinking of examination boat because of failure to sustain burden of showing that violation of regulations relating to the Certificate of Inspection requirements concerning complement of crews on barges could not have contributed to collision. *Martin Marine Transp. Co. v. U. S.*, C.A.Va.1950, 183 F.2d 676.

Evidence shows that failure of a passenger carrying seagoing barge of more than 100 gross tons to have transverse bulkheads as required by regulation contributed or could have contributed to loss of lives and personal effects following collision through fault of steamship, and that hence barge is liable for one-half of steamship's liability therefor. *Carr v. Hermosa Amusement Corporation*, C.C.A.Cal.1943, 137 F.2d 983, certiorari denied 64 S.Ct. 520, 321 U.S. 764, 88 L.Ed. 1040.

9. Mandamus

Appropriate order, sought by vessel owner, requiring Collector of Customs to issue license or other appropriate documents so that vessel could be used in coastwise trade, would be in substance a writ of mandamus, and district court of United States had no original jurisdiction to grant such relief. *Longview Tugboat Co. v. Jameson*, C.A.Or.1955, 218 F.2d 547.

§ 396. Equipment of barges with life-saving appliances

Every such barge shall be equipped with the following appliances of kinds approved by the Commandant of the Coast Guard: At least one lifeboat, at least one anchor with suitable chain or cable, and at least one life preserver for each person on board. May 28, 1908, c. 212, § 11, 35 Stat. 428; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers,

agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1290, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted from the transfer, the

functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

"Commandant of the Coast Guard" was substituted for "board of supervising inspectors" on authority of 1946 Reorg. Plan

No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Notes of Decisions

1. Proximate cause

The death of the captain of a barge, who fell overboard when the barge was struck by a passing tug while lying in a slip, and was drowned, being unable to swim, was not legally attributable to negligence of the owner of the barge in

failing to equip it with life-preservers or buoys, in the absence of any evidence tending to show that the presence of such appliances on board would have saved deceased. *New York Cent. R. Co. v. Grimstad* (C.C.A.N.Y.1920) 264 F. 334.

§ 397. Certificate of inspection and equipment of barge required

A register, enrollment, or license shall not be issued or renewed by any collector or other officer of customs to any such barge unless at the time of issue or renewal such barge has in force the certificate of inspection prescribed by section 395 of this title and on board the equipment prescribed by section 396 of this title. May 28, 1908, c. 212, § 12, 35 Stat. 428; Mar. 4, 1915, c. 184, § 6, 38 Stat. 1218.

Historical Note

Modification. Prior to incorporation into the Code, Act May 28, 1908, was amended by Act Mar. 4, 1915, which substituted "certificate" for "certificates".

§ 398. Navigating barge without certificate or equipment prescribed

If any such barge shall be navigated without such certificate of inspection, or without any part of the equipment prescribed by section 396 of this title, the owner shall be liable to a penalty of \$500 for each offense. May 28, 1908, c. 212, § 13, 35 Stat. 428.

§ 399. Certificate; temporary certificate; completion of voyage after expiration

When the inspection of a steam vessel is completed and the Secretary of the Department in which the Coast Guard is operating approves the vessel and her equipment throughout, he shall make and subscribe a certificate to that effect. He shall deliver such certificate to the master or owner of the vessel to which it relates, shall keep one copy thereof on file in his office, and shall deliver one copy to the official who is performing the duties of the collector or other chief officer of the customs of the district in which such inspection

has been made, who shall keep the same on file in his office. If the Secretary refuses to grant a certificate of approval, he shall make a statement in writing and sign the same, giving the reasons for his disapproval. Upon such inspection and approval the Secretary shall also make and subscribe a temporary certificate, which shall set forth substantially the fact of such inspection and approval, and shall deliver the same to the master or owner of the vessel and shall keep a copy thereof on file in his office. The said temporary certificate shall be carried and exposed by vessels in the same manner as is provided in section 400 of this title for the regular certificate, and the form thereof and the period during which it is to be in force shall be as prescribed under the authority of section 375 of this title. And such temporary certificate, during such period and prior to the delivery to the master or owner of the regular certificate, shall take the place of and be a substitute for the regular certificate of inspection, as required by this section and by section 404 of this title, and for the purposes of said sections. Such temporary certificate shall also be subject to revocation in the manner and under the conditions provided in section 435 of this title. No vessel required to be inspected under the provisions of title 52 of the Revised Statutes shall be navigated without having on board an unexpired regular certificate of such inspection or such temporary certificate: *Provided, however,* That any such vessel operated upon a regularly established line from a port of the United States to a port of a foreign country not contiguous to the United States whose certificate of inspection expires at sea or while said vessel is in a foreign port or a port of Hawaii may lawfully complete her voyage without the regular certificate of inspection or the temporary certificate required by this section, and no liability for penalties imposed by title 52 of the Revised Statutes for want of such certificate shall be incurred until her voyage shall have been completed: *Provided,* That said voyage shall be so completed within thirty days after the expiration of said certificate or temporary certificate: *Provided further,* That no such vessel whose certificate of inspection shall expire within fifteen days of the date of her sailing shall proceed upon her voyage to such port of a foreign country not contiguous to the United States without first having procured a new certificate of inspection or the temporary certificate required by this section. R.S. § 4421; Feb. 27, 1877, c. 69, § 1, 19 Stat. 251; June 11, 1906, c. 3071, 34 Stat. 230; June 25, 1910, c. 402, 36 Stat. 831; Mar. 4, 1915, c. 184, § 1, 38 Stat. 1216; Proc.No. 2695, July 4, 1946, 11 F.R. 7517, 60 Stat. 1352; 1946 Reorg.Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097; June 8, 1955, c. 133, 69 Stat. 86.

Historical Note

Derivation. Act Feb. 28, 1871, c. 100, § 11, 16 Stat. 443.

References in Text. For distribution of title 52, sections 4399-4500, of the Revised Statutes, referred to in the text,

of which this section is a part, see note under section 170 of this title.

Codification. R.S. § 4421, as originally enacted, read as follows: "When the inspection of a steam vessel is completed

and the inspectors approve the vessel and her equipment throughout, they shall make and subscribe a certificate to the collector or other chief officer of the customs of the district in which such inspection has been made in accordance with the form and regulations prescribed by the board of supervising inspectors. Such certificate shall be verified by the oaths of inspectors signing it, before the chief officer of the customs of the district or any other person competent by law to administer oaths. If the inspectors refuse to grant a certificate of approval, they shall make a statement in writing and sign the same, giving the reasons for their disapproval."

The amendment by Act Feb. 27, 1877, consisted in the insertion of a comma, after the word "made," in the first sentence.

The amendment by Act June 11, 1906, consisted in adding to the section the following provisions: "Upon such inspection and approval, the inspectors shall also make and subscribe a temporary certificate, which shall set forth substantially the fact of such inspection and approval, and shall deliver the same to the master or owner of the vessel, and shall keep a copy thereof on file in their office. The said temporary certificate shall be carried and exposed by vessels in the same manner as is provided in section forty-four hundred and twenty-three for copies of the regular certificate, and the form thereof and the period during which it is to be in force shall be as prescribed by the board of supervising inspectors, or the executive committee thereof, as provided in section forty-four hundred and five. And such temporary certificate, during such period and prior to the delivery to the master or owner of the copies of the regular certificate, shall take the place of and be a substitute for, such copies of the regular certificate of inspection as required by sections forty-four hundred and twenty-three, forty-four hundred and twenty-four, and forty-four hundred and twenty-six, and for the purposes of said sections, and shall also, during such period, be a substitute for the regular certificate of inspection as required by section forty-four hundred and ninety-eight and for the purposes of said section until such regular certificate of inspection has been filed with the collector or other chief officer of customs. Such temporary certificate shall also be subject to revocation in the manner and under the conditions provided in section forty-four hundred and fifty-three. No vessel required to be inspected under the provisions of this title shall be navigated without having on board an unexpired

regular certificate of inspection or such temporary certificate."

The amendment by Act June 25, 1910, consisted in the addition, after the provisions added by the previous amendment of the following: "Provided, however, That any such vessel, operated upon a regularly established line from a port of the United States to a port of a foreign country not contiguous to the United States, whose certificate of inspection expires at sea, or while said vessel is in a foreign port or a port of the Philippine Islands or Hawaii, may lawfully complete her voyage without the regular certificate of inspection or the temporary certificate required by this section, and no liability for penalties imposed by this title for want of such certificate shall be incurred until her voyage shall have been completed: Provided, That said voyage shall be so completed within thirty days after the expiration of said certificate or temporary certificate: Provided further, That no such vessel whose certificate of inspection shall expire within fifteen days of the date of her sailing shall proceed upon her voyage to such port of a foreign country not contiguous to the United States without first having procured a new certificate of inspection or the temporary certificate required by this section."

The amendment by Act Mar. 4, 1915, consisted in technical changes.

Reference to a port of the Philippine Islands in first proviso was omitted as covered by the reference to a foreign port under Proc.No. 2695, set out in note under section 1394 of Title 22, Foreign Relations and Intercourse, which proclaimed the independence of the Philippines.

1955 Amendment. Act June 8, 1955, amended section by eliminating requirement for verification under oath of certificates of inspection.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg.Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but

such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

References to inspectors were changed to the Coast Guard and to Coast Guard officials and references to the board of supervising inspectors and its executive committee were changed to Commandant of the Coast Guard on authority of 1946

Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Legislative History: For legislative history and purpose of Act June 8, 1955, see 1955 U.S. Code Cong. and Adm. News, p. 1986.

Cross References

False official statements, see section 907 of Title 10, Armed Forces and National Defense.

Fraud and false statements, see section 1001 et seq. of Title 18, Crimes and Criminal Procedure.

Section as applicable to foreign private steam vessels, see section 362 of this title.

Notes of Decisions

Evidence of care 2
Vessels within section

U. S. v. Moore (D.C. Ohio 1866) Fed. Cas. No. 15,801.

1. Vessels within section

This section applies to a steamcraft used to transport the owner and his superintendent across the Delaware, and occasionally his workmen, to the number of nine or ten. *Hartranft v. Du Pont* (Pa. 1886) 6 S.Ct. 1188, 118 U.S. 223, 30 L.Ed. 205.

The owner of a river steamboat is not liable to the penalty for noninspection, where the last year's inspection expires while the vessel is in the service of the government under military impressment.

2. Evidence of care

In personal injury action against vessel owners by employé of subcontractors injured by escaping steam while at work in boiler room of steamship, there was no error in instruction as to inspection of steamships under this section, that jury could not consider inspection as bearing on defendants' care, that defendants could to some extent rely on inspection as indicating valve was free from defects, but that they could not rely on inspection exclusively. *Cullen v. New England Fuel & Transportation Co.* (1925) 148 N.E. 371, 253 Mass. 85.

§ 400. Placing of certificate for observation by passengers

The original certificate of inspection delivered to the master or owner of a steam vessel shall be placed by such master or owner in a conspicuous place in the vessel where it will be most likely to be observed by passengers and others, and there kept at all times, framed under glass, as evidence of the authority thereby conferred: *Provided, however,* That where it is not practicable to so expose said certificate, it shall be carried in the vessel in such manner as shall be prescribed by the regulations established by the Commandant of the Coast Guard. R.S. § 4423; Mar. 3, 1905, c. 1457, § 3, 33 Stat. 1029; Mar. 4, 1915, c. 184, § 3, 38 Stat. 1217; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Derivation. Act Feb. 28, 1871, c. 100, § 31, 16 Stat. 450.

Codification. R.S. § 4423, as enacted in the Revised Statutes, read as follows: "Every collector or other chief officer of the customs shall retain on file all original certificates of the inspectors required to be delivered to him, and shall give to the master or owner of the vessel therein named three certified copies thereof, two of which shall be placed by such master or owner in conspicuous places in the vessel where they will be most likely to be observed by passengers and others, and there kept at all times, framed under glass, and the other shall be retained by such master or owner as evidence of the authority thereby conferred."

It was amended by Act Mar. 3, 1905, by the addition of the following proviso: "Provided, however, That where it is not practicable to so expose said copies they shall be carried in the vessel in such manner as shall be prescribed by the regulations established by the board of supervising inspectors with the approval of the Secretary of Commerce and Labor."

It was further amended by Act Mar. 4, 1915, to read as set forth here.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

"Commandant of the Coast Guard" was substituted for "board of supervising inspectors with the approval of the Secretary of Commerce" on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Cross References

Section as applicable to foreign private steam vessels, see section 362 of this title.

Notes of Decisions

Liens §

Penalties §

Uninspected vessels 1

1. Uninspected vessels

This section is inapplicable to the case of a vessel which has never been inspected. *The Steamboat Joshua Levi-ness*, D.C.N.Y. 1878, 9 Ben. 339, 13 Fed. Cas. No. 7,549.

2. Penalties

The only penalty for taking passengers on a steam vessel which had not, in a conspicuous place, the certificate of sea-

worthiness required by Act Aug. 30, 1852, § 25, was the penalty of \$100 given by that section, and neither the vessel nor her owner was liable to the penalty of \$500 given by the first section. *U. S. v. The Manhattan*, C.C.N.Y. 1855, Fed. Cas. No. 15,714.

3. Liens

The lien of a seaman for wages is paramount to the lien of the United States for penalties for violation of this section and section 475 of this title, requiring a life preserver or float for every cabin and deck passenger that the vessel is authorized to carry. *The Jennie Hayes*, D.C.Iowa 1889, 37 F. 373.

§ 401. Repealed. Oct. 9, 1940, c. 777, § 7, 54 Stat. 1028.**Historical Note**

Section, R.S. § 4422; Act Mar. 4, 1915, c. 184, § 2, 38 Stat. 1217, related to the grant and posting of a certificate to carry gunpowder, and is now covered by section 170 of this title.

§ 402. Penalty for receiving passengers in absence of unexpired certificate of approval

Whenever any passenger is received on board any steam vessel not having an unexpired certificate of approval or an unexpired temporary certificate of approval placed and kept as required by sections 399 and 400 of this title, such steam vessel shall be liable to a penalty of \$100 for each offense. R.S. § 4424; Mar. 4, 1915, c. 184, § 4, 38 Stat. 1217; Oct. 9, 1940, c. 777, § 4, 54 Stat. 1028.

Historical Note

Derivation. Act Feb. 28, 1871, c. 100, § 31, 16 Stat. 450.

Codification. R.S. § 4424, before being incorporated in the Code, was amended by Act May 4, 1915, which substituted the words "an unexpired certificate of approval or an unexpired temporary certificate of approval" for the words "the certified copies of the certificate of approval," and omitted the words "and a certified copy thereof" following the

words "a certificate authorizing the same."

1940 Amendment. Act Oct. 9, 1940, amended section by omitting provisions relating to receiving or carrying gunpowder in violation of requirements.

Effective Date and Separability of 1940 Amendment. Effective date and separability of Act Oct. 9, 1940, see note under section 170 of this title.

Cross References

Appropriations, see section 170b of this title.

Section as applicable to foreign private steam vessels, see section 362 of this title.

§ 403. Punishment for certifying falsely

Every inspector who willfully certifies falsely touching any steam vessel, as to her hull, accommodations, boilers, engines, machinery, or their appurtenances, or any of her equipments, or any matter or thing contained in any certificate signed and sworn to by him, shall be punished by fine of not more than \$500, or imprisonment for not more than six months, or both. R.S. § 4425.

Historical Note

Derivation. Act Feb. 28, 1871, c. 100, § 32, 16 Stat. 450.

Transfer of Functions. The offices of local inspectors of the Bureau of Marine Inspection and Navigation were abolished and their inspection functions

transferred to the Commandant of the Coast Guard by 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097. See note under section 1 of this title.

Cross References

Unauthorized fees for inspection of vessels, penalties, see section 1912 of Title 18, Crimes and Criminal Procedure.

§ 404. Inspection of ferryboats, canal boats, and small craft; regulations

The hulls and boilers of every ferryboat, canal boat, yacht or other small craft of like character propelled by steam, shall be inspected under the provisions of this title. Such other provisions of law for the better security of life as may be applicable to such vessels shall, by the regulations of the Secretary of the department in which the Coast Guard is operating, also be required to be complied with before a certificate of inspection shall be granted, and no such vessel shall be navigated without a licensed engineer and a licensed pilot: *Provided*, That in open steam launches of ten gross tons and under, one person, if duly qualified, may serve in the double capacity of pilot and engineer. All vessels of above fifteen gross tons carrying freight for hire and all vessels of above fifteen gross tons and in excess of sixty-five feet in length carrying passengers for hire, but not engaged in fishing as a regular business, propelled by gas, fluid, naphtha, or electric motors, shall be subject to all the provisions of this section relating to the inspection of hulls and boilers and requiring engineers and pilots, and for any violation of the provisions of title 52 of the Revised Statutes applicable to such vessels, or of rules or regulations lawfully established thereunder, and to the extent to which such provisions of law and regulations are so applicable, the said vessels, their masters, officers, and owners shall be subject to the provisions of sections 494-498 of this title, relating to the imposition and enforcement of penalties and the enforcement of law: *Provided, however*, That until June 30, 1956, no vessel registered or licensed as a vessel of the United States of fifteen gross tons or less on December 31, 1953, shall be deemed to be subject to the inspection provisions of this section notwithstanding the fact that such vessel may thereafter be found to have a tonnage in excess of fifteen gross tons, unless such finding results from an alteration in the length, breadth, or depth effected after December 31, 1953. R.S. § 4426; Dec. 22, 1890, c. 26, 26 Stat. 692; May 16, 1906, c. 2460, 34 Stat. 193; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097; Aug. 31, 1954, c. 1171, 68 Stat. 1047; May 10, 1956, c. 258, § 6(a), (b), 70 Stat. 153.

Historical Note

Derivation. Act Feb. 28, 1871, c. 100, § 58, 16 Stat. 456.

References in Text. This title, and title 52 of the Revised Statutes, referred to in the text, constitute R.S. §§ 4399-4500. For distribution of such sections

in the Code see note under section 170 of this title.

Codification. R.S. § 4426, as enacted in the Revised Statutes, was as follows: "The hull and boilers of every ferryboat, canal-boat, yacht, or other small craft

"fishing" as a regular business. *Bryant v. Rucker*, D.C.Ala.1953, 111 F.Supp. 309.

5. Motorboats

This section is not applicable to motorboat as defined in Motorboat Act of 1940, section 526 et seq. of this title. *Bryant v. Rucker*, D.C.Ala.1953, 111 F.Supp. 309.

6. Vessel used by owner and employees

This section applies to a steam craft used to transport the owner and his superintendent across the Delaware, and occasionally his workmen, to the number of nine or ten. *Hartranft v. Du Pont*, Pa.1886, 6 S.Ct. 1188, 118 U.S. 223, 30 L.Ed. 205. See, also, *Oyster Police Steamers*, D.C.Md.1887, 31 F. 763.

7. Fire extinguishers

Steamboat inspectors may require ferryboats to be provided with the same precautions against fire, so far as applicable, as are expressly provided in reference to any other steam vessels carrying passengers, and when the boat passes inspection on the basis of having a steam pump the boat is bound to maintain it in the condition required by section 464 of this title. *The Garden City*, D.C.N.Y.1886, 26 F. 766.

8. Operation before inspection or without license

Provision of this section, making it applicable to vessels propelled by gas, fluid, or electricity, when used for carrying freight or passengers for hire, contains no provisions prohibiting an owner from running his vessel before such inspection has been made, and an indictment for navigating a gasoline launch for hire without inspection charges no offense, at least where it does not aver that any regulation prohibiting such act in respect to that class of vessels has been adopted pursuant to the authority given by statute. *U. S. v. Nash*, D.C.Ky.1901, 111 F. 525.

One who navigates a gasoline launch of over 15 tons burden, in the carrying of freight for hire, without a licensed engineer, is guilty of a crime, and may

be indicted and prosecuted therefor, notwithstanding the provisions of sections 494 and 497 of this title, which authorize a proceeding in rem against the vessel by the collector or inspectors of customs for the recovery of a penalty of \$500 for a violation of any of the provisions of such title. *Id.*

This section is not violated by the fact that a licensed master of such a craft, in control of its navigation, intrusts the physical handling of the wheel to a wheelsman not having a license as pilot or engineer. *Kennedy v. Great Lakes Dredge & Dock Co.*, 1915, 191 Ill.App. 585.

9. Penalties

The United States, filing Hbel to recover penalties under this section for vessel's failure to have certificate of inspection on board when it left port, must establish that vessel was engaged in carriage of freight or passengers for hire within this section respecting vessel inspections when alleged penalties accrued. *U. S. v. The Reefer King*, D.C. Wash.1950, 90 F.Supp. 236.

A chartered vessel, carrying charterer's cargo for lump sum charter hire under bareboat charter providing for charterer's payment of vessel rental regardless of whether vessel carried any cargo and prohibiting carriage of cargo belonging to others than charterer, was not engaged in carriage of freight or passengers for hire at time of alleged accrual of penalties under this section for failure to have certificate of inspection on board when vessel left port, and hence was not liable to United States for such penalties. *Id.*

10. Declaratory judgment

Commandant of Coast Guard was a necessary party in action by owner of yacht for declaratory judgment to determine whether or not yacht was subject to this section as contended by the Coast Guard, and action was required to be brought in such district as would have jurisdiction over the Commandant. *Bryant v. Rucker*, D.C.Ala.1953, 111 F.Supp. 309.

§ 405. Tugboats and freight boats

The hull and boiler of every tugboat, towing boat, and freight boat shall be inspected, under the provisions of title 52 of the Revised Statutes; and the Coast Guard shall see that the boilers, machinery, and appurtenances of such vessel are not dangerous in form or workmanship, and that the safety valves, gauge cocks, low-water

alarm indicators, steam gauges, and fusible plugs are all attached in conformity to law; and the officers navigating such vessels shall be licensed in conformity with the provisions of sections 214, 224, 226, 228, 229, and 230 of this title and shall be subject to the same provisions of law as officers navigating passenger steamers. R.S. § 4427; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Derivation. Act Feb. 28, 1871, c. 100, § 53, 16 Stat. 456.

References in Text. For distribution of title 52, sections 4399-4500, of the Revised Statutes, referred to in the text, of which this section is a part, see note under section 170 of this title.

Codification. Provisions authorizing tugboats to carry certain persons in addition to the crew, such persons not to be passengers and not to be carried for hire, and requiring vessels carrying such persons to carry a life-preserver for every such person carried, were made by Act July 9, 1836, c. 755, §§ 1, 2, 24 Stat. 129, incorporated in this Code as sections 458 and 459 of this title. This act was amended by Act Feb. 23, 1901, c. 465, 31 Stat. 800, which in amending said act described it as follows: "That the amendment to section forty-four hundred and twenty-seven, approved July ninth, eighteen hundred and eighty-six, entitled 'An Act Relating to the Licensing of Vessels Engaged in Towing to Carry Persons in Addition to Their Crews,' be amended to read as follows."

Neither the provisions of said Act July 9, 1836, so amended, nor those of said amendatory act, related to the subject of this section, although, in the clause of the amendatory act quoted

above, the former act was described as an amendment to this section.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 2 of Title 14, Coast Guard.

"Coast Guard" was substituted for "inspectors" on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Cross References

Exemption of vessels laid up and dismantled, see section 391(e) of this title.
Motorboats carrying passengers for hire to have licensed operator, see section 526f of this title.

Notes of Decisions

Unlicensed operator 2
Vessels within section 1

1. Vessels within section.

A steam tug engaged exclusively in towing upon a river within the limits of a state was not subject to inspection,

under Act June 8, 1864, § 4. The *Farragut*, C.C.Conn.1868, Fed.Cas.No.4,677. See, also, The *Oconto*, D.C.Wis.1873, Fed.Cas.No.10,421, affirmed Fed.Cas.No.9,330.

It was not material that the vessels towed were engaged in interstate commerce. The *Farragut*, C.C.Conn.1868, Fed.Cas.No.4,677.

This section applies only to vessels propelled in whole or in part by steam. *Commonwealth v. Breakwater Co.*, 1913, 100 N.E. 1034, 214 Mass. 10.

2. Unlicensed operator

Where there was a collision between a tug and an overtaking vessel, and the tug was being operated in a busy harbor

by a person without a master's license, danger signals were not given by the tug, as contemplated by Rules of Navigation, art. 18, rule 8, section 203 of Title 33, it not being shown that the absence of a licensed master could not have affected the occurrence, the tug was at fault. *The City of Baltimore*, C.C.A.Md.1922, 282 F. 490.

§ 406. Construction of boilers and unfired pressure vessels

All boilers and unfired pressure vessels constructed of iron or steel plates or other approved metals for use on vessels subject to inspection shall be made of material that has been tested, inspected, and stamped in accordance with the requirements of this Act. R.S. § 4428; June 13, 1933, c. 61, 48 Stat. 126.

Historical Note

Derivation. Act Feb. 28, 1871, c. 100, § 35, 16 Stat. 451.

References in Text. Words "this Act", referred to in the text, are so in Statutes at Large. In R.S. § 4428, as originally enacted, a similar reference read "this title," meaning title LII of the Revised Statutes, but this was amended by Act June 13, 1933, to read

"this Act" which in the Revised Statutes is ambiguous. Reference to said Act of June 13, 1933, might have been intended. It was incorporated in this Code as this section and sections 361, 392, and 407-412 of this title.

1933 Amendment. Act June 13, 1933, amended section generally.

Notes of Decisions

Enrollment under special act 2
Name plates 1

1. Name plates

A name plate on a steamboat boiler, showing the maker's name, place where manufactured, and the tensile strength of boiler, is unnecessary. *The Otha J. Sample*, D.C.N.J.1898, 87 F. 489.

2. Enrollment under special act

Where, by Act May 2, 1878, c. 80 (special act), an American register enrollment was authorized to be issued to

the Canadian-built propeller *East*, by the name of *The Kent*, and the vessel was dismantled as a steamer, and subsequently enrolled under that Act as a barge, and afterwards the machinery was replaced in her, but the inspectors of steamboats declined to give her a certificate of inspection, the boiler not being constructed of stamped iron, as required by this section, the Act of 1878 was executed by the enrollment of the vessel as a barge, and the boiler, being then no part of the vessel, was not nationalized under that Act, nor entitled to pass inspection without being stamped. (1880) 16 Op.Atty.Gen. 680.

§ 407. Punishment for improper construction

Any person, firm, or corporation who constructs a boiler, or steam pipe connecting the boilers, or an unfired pressure vessel for use on vessels subject to inspection, of iron or steel plates or other approved metals which have not been duly tested, inspected, and stamped according to the provisions of this Act and the requirements of the Commandant of the Coast Guard; or who knowingly uses any defective material in the construction of such boiler, steam pipe, or

pressure vessel; or who drifts any rivet hole to make it come fair; or who delivers any such boiler, steam pipe, or pressure vessel for use, knowing it to be defective in design, material, or construction, shall be fined \$1,000. Nothing in this Act shall be so construed as to prevent from being used on such vessels any boiler, steam generator, steam pipe, or unfired pressure vessel which may not be constructed of riveted iron or steel plates: *Provided*, That scientific data and facts are submitted to enable the Commandant of the Coast Guard to satisfy himself that such boiler, steam generator, or pressure vessel is equal in strength and as safe from explosion as one of the best quality of iron or steel plates of riveted construction: *Provided, however*, That the Commandant of the Coast Guard may grant permission to use any boiler, steam generator, or unfired pressure vessel not of iron or steel plate riveted construction upon the certificate of the Coast Guard official for the district wherein such boiler, steam generator, or pressure vessel is to be used, and other satisfactory proof that the use of the same is safe and efficient, said permit to be valid until the Commandant acts thereon: *Provided further*, That such boilers, steam generators, or pressure vessels may be constructed with seamless shells or by means of any approved method of welding governed by the rules and regulations prescribed by the Commandant of the Coast Guard. R.S. § 4429; Aug. 7, 1882, c. 433, § 1, 22 Stat. 310; Feb. 14, 1903, c. 552, § 10, 32 Stat. 829; Mar. 4, 1913, c. 141, § 1, 37 Stat. 736; June 13, 1933, c. 61, 48 Stat. 126; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Derivation. Act Feb. 28, 1871, c. 100, § 35, 16 Stat. 451.

References in Text. Words "this Act", referred to in the text, are so in Statutes at Large. In R.S. § 4229, as originally enacted, a similar reference read "this title," meaning title LII of the Revised Statutes, but this was amended by Act June 13, 1933, to read "this Act" which in the Revised Statutes is ambiguous. Reference to said Act June 13, 1933, might have been intended. It was incorporated in this Code as sections 361, 392, and 406-412 of this title.

Codification. R.S. § 4429, as enacted in the Revised Statutes, did not contain the proviso relating to a temporary permit. Said proviso was added to the section by Act Aug. 7, 1882.

Upon incorporation into the Code, the words "Secretary of Commerce" were substituted for "Secretary of the Treasury" to conform to Acts Feb. 14, 1903, and Mar. 4, 1913. See note under section 366 of this title.

1933 Amendment. Act June 13, 1933, amended section generally, and, among other changes, omitted provision relating to payment of one-half of fine to informers, and added proviso relating to construction of boilers, etc., with seamless shells or by welding.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when

the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

"Commandant of the Coast Guard" was substituted for "board of supervising inspectors" and for "Secretary of Commerce"; "Coast Guard official" was substituted for "supervising inspector"; and, in second proviso, "until the next regular meeting of the board of supervising in-

spectors who shall act thereon" was changed to "until the Commandant acts thereon", on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

§ 408. Boiler plates

All iron or steel plates, or other material used in the construction of boilers or unfired pressure vessels for use on vessels subject to inspection shall be tested and inspected in such manner as shall be prescribed by the Commandant of the Coast Guard, so as to enable the Coast Guard to ascertain the tensile strength, homogeneity, toughness, and ability to withstand the effect of repeated heating and cooling; and no plate or other material shall be used in the construction of such boilers or pressure vessels which has not been tested, inspected, and approved under the rules and regulations of the Commandant of the Coast Guard: *Provided, however,* That small unfired pressure vessels having diameters not exceeding thirty inches and subject to a maximum allowable working pressure not exceeding one hundred pounds per square inch shall be exempt from this requirement.

The Commandant of the Coast Guard may detail Coast Guard officials to inspect iron or steel plates or other material at the mills where the same are manufactured; and if such plates or material are found in accordance with the rules of the Commandant of the Coast Guard, the Coast Guard official shall stamp the same with the initials of his name and the official stamp of the Coast Guard, which stamp shall be authorized by the Commandant; and material so stamped shall be accepted by the Coast Guard officials of the various districts as being in full compliance with the requirements of this section regarding the test and inspection of such plates and material: *Provided,* That any person, firm, or corporation who affixes any false, forged, fraudulent, spurious, or counterfeit of the stamp herein authorized to be put on by a Coast Guard official shall be deemed guilty of a felony and shall be fined not less than \$1,000 nor more than \$5,000 and imprisoned not less than two years nor more than five years. R.S. § 4430; Jan. 22, 1894, c. 16, 28 Stat. 28; Feb. 14, 1903, c. 552, § 10, 32 Stat. 829; Mar 4, 1913, c. 141, § 1, 37 Stat. 736; June 13, 1933, c. 61, 48 Stat. 126; May 27, 1936, c. 463, § 1, 49 Stat. 1380; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Derivation. Act Feb. 28, 1871, c. 100, § 36, 16 Stat. 451.

Codification. R.S. § 4430, as enacted in the Revised Statutes, contained only the first sentence thereof, ending with the words, "inspected and approved under those rules." Act Jan. 22, 1894, amended said section by adding provisions relating to detail of assistant inspectors to inspect boiler plates at the manufacturing mills, stamping of plates found in accordance with rules, acceptance of stamped plates by local inspectors, and penalties for specified violations.

Upon incorporation into the Code the words "Secretary of Commerce" were substituted for "Secretary of the Treasury" to conform to Acts Feb. 14, 1903, and Mar. 4, 1913. See note under section 366 of this title.

1933 Amendment. Act June 13, 1933, amended section generally, and, among other changes, divided it into paragraphs, added to first paragraph the proviso exempting small unfired pressure vessels, and substituted "Director of the Bureau of Navigation and Steamboat Inspection" for "Supervising Inspector General".

Change of Name. "Director of the Bureau of Navigation and Steamboat Inspection" was changed to "Director of the Bureau of Marine Inspection and Navigation" to conform to Act May 27, 1936, which changed the Bureau of Navigation and Steamboat Inspection to the Bureau of Marine Inspection and Navigation. See note under section 1 of this title.

Transfer of Functions. All functions of all officers of the Department of the

Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

References to the board of supervising inspectors, and to the Director of the Bureau of Marine Inspection and Navigation in first clause of second paragraph, were changed to Commandant of the Coast Guard, "Coast Guard" or "Coast Guard officials" was substituted for references to inspectors, "Coast Guard" was substituted for "Bureau of Marine Inspection and Navigation" in second paragraph, and provisions for approval and direction of the Secretary of Commerce were omitted, on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

§ 409. Stamping boiler plates

Every plate of iron or steel, made for use in the construction of boilers, unfired pressure vessels or riveted steam pipe shall be distinctly and permanently stamped by the manufacturer thereof, and, if practicable, in such places that the marks shall be left visible when such plates are assembled, with the name of the manufacturer, and the minimum tensile strength in pounds per square inch, and the Coast Guard officials shall keep a record in their office of the stamps upon all plates, material, and boilers which they inspect. R.S. § 4431; June 13, 1933, c. 61, 48 Stat. 127; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Derivation. Act Feb. 28, 1871, c. 100, § 37, 16 Stat. 451.

1933 Amendment. Act June 13, 1933, amended section to include reference to unfired pressure vessels or riveted steam pipe and made other technical changes.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5,

Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

Reference to inspectors was changed to Coast Guard officials on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Notes of Decisions**1. Name plate**

This section does not require a name plate on a boiler showing the name of the manufacturer, the place where manu-

factured, and the number of pounds tensile strain it will bear to the sectional square inch. *The Otha J. Sample*, D.C. N.J.1898, 87 F. 489.

§ 410. Counterfeiting stamps

Any person, firm, or corporation who counterfeits, or causes to be counterfeited, any of the marks or stamps prescribed for iron or steel plates or other material tested and inspected under this Act, or who designedly stamps, or causes to be stamped falsely, any such plates or material; and every person who stamps or marks, or causes to be stamped or marked, any such plates or material with the name or trade mark of another, with the intent to mislead or deceive, shall be fined \$2,000, and may, in addition thereto, at the discretion of the court, be imprisoned not exceeding two years. R.S. § 4432; June 13, 1933, c. 61, 48 Stat. 127.

Historical Note

Derivation. Act Feb. 28, 1871, c. 100, § 38, 16 Stat. 452.

References in Text. Words "this Act", referred to in the text, are so in Statutes at Large. The use of "this Act" in the Revised Statutes is ambiguous. Reference to Act June 13, 1933, might have been intended. Said Act was incorporat-

ed in this Code as sections 361, 392, and 406-412 of this title.

1933 Amendment. Act June 13, 1933, amended section to include references to material throughout and omitted provision for payment of one-half of fine to informer, among other changes.

§ 411. Pressure of steam allowable

The Commandant of the Coast Guard is empowered to prescribe formulas, rules, and regulations for the design, material, and construction of boilers, unfired pressure vessels, and appurtenances thereof, and steam piping for use on vessels subject to the provisions of this Act. The maximum working pressure shall be determined by formulas prescribed by the Commandant of the Coast Guard, and no such boiler, pressure vessel, or appurtenance thereof shall be designed or operated where the factor of safety is less than four: *Provided*, That the minimum thickness and maximum allowable working pressure of valves, fittings, and other appurtenances shall be determined by formulas prescribed by the Commandant of the Coast Guard. R.S. § 4433; June 13, 1933, c. 61, 48 Stat. 127; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Derivation. Act Feb. 28, 1871, c. 100, § 39, 16 Stat. 452.

References in Text. Words "this Act", referred to in the text, are so in Statutes at Large. In R.S. § 4433, as originally enacted, a similar reference read "this title," meaning title LII of the Revised Statutes, but this was amended by Act June 13, 1933, to read "this Act" which in the Revised Statutes is ambiguous. Reference to said Act of June 13, 1933, might have been intended. It was incorporated in this Code as sections 381, 392, and 406-412 of this title.

1933 Amendment. Act June 13, 1933, amended section generally.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance

of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under section 1 and 3 of Title 14, Coast Guard.

"Commandant of the Coast Guard" was substituted for "board of supervising inspectors" on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

§ 412. Thickness of boiler plate

The maximum allowable thickness of shell plates and the details of material, design, and construction of externally fired boilers shall be determined by action of the Commandant of the Coast Guard. R.S. § 4434; Feb. 11, 1885, c. 55, 23 Stat. 298; Feb. 28, 1895, c. 139, § 1, 28 Stat. 690; Mar. 2, 1909, c. 244, §§ 1, 2, 35 Stat. 687; June 13, 1933, c. 61, 48 Stat. 127; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Derivation. Act Feb. 23, 1871, c. 100, § 39, 18 Stat. 452.

Codification. Upon incorporation into the Code, R.S. § 4434, as amended by Acts Feb. 11, 1885; Feb. 23, 1895; Mar. 2, 1909, read as follows:

"No externally fired boiler having its shell constructed of iron or steel plates, exceeding an average thickness of thirty-eight one-hundredths of an inch, shall be employed on any steam vessel navigating the Red River of the North or rivers flowing into the Gulf of Mexico or their tributaries; and no externally fired boiler employed on any such steam vessel shall have less than three inches space between its shell and any of its internal flues, and not less than three inches space between such flues when any such flues are more than five inches in diameter, the measurements to be taken from the center of the length of the tapered section of said flues; and every such externally fired boiler employed on any such steam vessel shall be provided with a manhole in the lower part of the front head thereof, of such dimensions as may be prescribed by the Board of Supervising Inspectors, in all cases where the distance between its internal flues is less than three inches. Externally fired boilers having shells constructed of iron or steel plates not exceeding an average thickness of fifty one-hundredths of an inch may, in the discretion of the Supervising Inspector General, be authorized and employed on steam vessels navigating the Atlantic and Pacific Oceans, or salt water bays, or sounds, or the Great Lakes, or any of them, and waters flowing to and from the same, or any of them: *Provided*, That on inspection, no plate that is by this section limited to a thickness of thirty-eight one-hundredths of an inch and no plate that is by this section limited to a thickness of fifty one-hundredths of an inch shall be rejected for use if found to exceed those dimensions, respectively, if the approved average thickness thereof does not exceed the

limits therein specified, and the amount of steam pressure that will be permitted to be carried in boilers constructed in accordance with the requirements of this section shall be determined from measurements showing the least thickness of the plates.

"All externally fired boilers, constructed of iron or steel, prior to March 2, 1909, and then in use on any such vessels, wherein the space between the shell and any of its internal flues or between such flues is less than three inches, shall be deemed lawfully constructed."

1933 Amendment. Act June 13, 1933, amended section generally.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under section 1 and 3 of Title 14, Coast Guard.

"Commandant of the Coast Guard" was substituted for "board of supervising inspectors" on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

§ 413. Obstructing safety valves

Every person who intentionally loads or obstructs, or causes to be loaded or obstructed, in any way or manner, the safety valve of a boiler, or who employs any other means or device whereby the boiler may be subjected to a greater pressure than the amount allowed by the certificate of the Coast Guard, or who intentionally

deranges or hinders the operation of any machinery or device employed to denote the state of the water or steam in any boiler, or to give warning of approaching danger, or who intentionally permits the water to fall below the prescribed low-water line of the boiler, and every person concerned therein, directly or indirectly, shall be guilty of a misdemeanor, and shall be fined \$200, and may also be imprisoned not exceeding five years. R.S. § 4437; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Derivation. Act Feb. 28, 1871, c. 100, § 40, 16 Stat. 452.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 28, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a

service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under section 1 and 3 of Title 14, Coast Guard.

"Coast Guard" was substituted for "inspectors" on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Cross References

Offense punishable by imprisonment for term in excess of one year deemed a felony, see section 1 of Title 18, Crimes and Criminal Procedure.

§ 414. Records and reports of inspections and licenses

Coast Guard officials shall keep a record of certificates of inspection of vessels, their boilers, engines, and machinery, and of all their acts in their examination and inspection of steamers, whether of approval or disapproval; and when a certificate of approval is recorded, the original shall be delivered to the collector or other chief officer of the customs of the district. They shall also keep a like record of all licenses granted to masters, mates, pilots, and engineers, and of all refusals of the same, of all suspensions and revocations of license, of all refusals, suspensions, or revocations of which they shall receive notices from other districts. They shall also keep an accurate account of every steamer boarded by them during the year, and of all their official acts and doings. R.S. § 4457; Oct. 9, 1940, c. 777, § 5, 54 Stat. 1028; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Derivation. Act Feb. 28, 1871, c. 100, §§ 13, 61, 16 Stat. 445, 457.

1940 Amendment. Act Oct. 9, 1940, amended section by deleting "certificates authorizing gunpowder to be carried as freight by any steamer carrying passengers, and of" in second sentence following "keep a like record of".

Effective Date and Separability of 1940 Amendment. Effective date and separability of Act Oct. 9, 1940, see note under section 170 of this title.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out

in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under section 1 and 3 of Title 14, Coast Guard.

"Coast Guard officials" was substituted for "local inspectors" and provisions requiring reports of decisions, violations of law, and official acts and doings to the supervising inspectors were omitted on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Cross References

Appropriations, see section 170b of this title.

Certificate of inspection to be subscribed and filed, see section 399 of this title.

Notes of Decisions

**Certification of record
Evidence 2**

1. Certification of record

The requirement of this section that the local board of inspectors report their decision in cases of refusal, suspension, or revocation of licenses, and all testimony received by them in such proceeding did not dispense with the necessity of requiring the record to be certified up, when the supervising inspector of his own motion undertook to revise proceedings of the local board in

which the master was not suspended. *Fisher v. Alwen*, C.C.A. Wash. 1923, 290 F. 8.

2. Evidence

In libel arising out of collision between ocean-going vessel and barge being towed, deposition of captain of vessel taken during his examination before the local inspectors, at which time captain was subjected to cross-examination by counsel for adversary, was admissible on behalf of vessel after death of captain. *The Dixie Sword*, D.C.N.Y. 1944, 57 F. Supp. 183.

§ 415. Instruments, stationery, and printing for supervising inspectors and local boards

Historical Note

Codification. Section, R.S. § 4460; Acts Feb. 14, 1903, c. 552, § 10, 32 Stat. 829; Mar. 4, 1913, c. 141, § 1, 37 Stat. 736, related to procurement of instruments and other office supplies for supervising inspectors and local boards of

inspectors. Such offices and boards were abolished by 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097. See note under section 1 of this title.

§ 416. Regulations

The Commandant of the Coast Guard shall make such regulations as may be necessary to secure the proper execution and carry out the purposes of title 52 of the Revised Statutes, and sections 369 and 382b of this title. R.S. § 4462; Feb. 14, 1903, c. 552, § 10, 32 Stat. 829; Mar. 4, 1913, c. 141, § 1, 37 Stat. 736; May 27, 1936, c. 463, § 7, 49 Stat. 1386; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Derivation. Act Feb. 28, 1871, c. 100, § 65, 16 Stat. 458.

References in Text. For distribution of title 52, sections 4390-4500, of the Revised Statutes, referred to in the text, of which this section is a part, see note under section 170 of this title.

Codification. Upon incorporation into the Code, the words "Secretary of Commerce" were substituted for "Secretary of the Treasury" to conform to Acts Feb. 14, 1903 and Mar. 4, 1913. See note under section 366 of this title.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such

officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under section 1 and 3 of Title 14, Coast Guard.

"Commandant of the Coast Guard" was substituted for "Secretary of Commerce" on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Notes of Decisions

Power of Secretary Standard of care 2

1. Power of Secretary

The Secretary of Commerce and Labor was not authorized to amend, modify, or repeal existing regulations, or to adopt new regulations for the enforcement of the provisions of R.S. Title 52 (incorporated in part in this chapter), without prior action thereon by the board of supervising inspectors. (1903) 25 Op. Atty. Gen. 87.

2. Standard of care

Pilot rules of Department of Commerce requiring rowing boats under oars to have ready at hand lantern showing white light which shall be temporarily exhibited in sufficient time to prevent collision, indicated standard of care which canoe party on river should have observed, notwithstanding that rule might not have been technically applicable to canoes. *Felge v. Hurley*, C.C.A. Ky. 1937, 89 F.2d 575.

§§ 417-419. Omitted**Historical Note**

Codification. Section 417, Act May 27, 1936, c. 463, § 7, 49 Stat. 1386, related to rules and regulations, and is now covered by section 416 of this title.

Sections 418 and 419, Act May 27, 1936, c. 463, §§ 8, 9, 49 Stat. 1386, authorized

appropriations to carry out sections 239, 369, 373-374a, 382b, 417-419 of this title and section 597a-1 of Title 5 and repealed all laws or parts of laws inconsistent therewith.

PROCEDURE; DECISIONS AND REVIEW THEREOF**§§ 431-434. Omitted****Historical Note**

Codification. Sections 431-434 were superseded by 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, which abolished the boards and offices to which these sections related. See note under section 1 of this title.

Section 431, Acts June 10, 1918, c. 95, § 1, 40 Stat. 602; June 30, 1932, c. 314, §§ 501, 502(b), 47 Stat. 415; May 27, 1936, c. 463, § 1, 49 Stat. 1380, provided for appeals from any decision or action of a board of local inspectors to the supervising inspector and from him to the Director of the Bureau of Marine Inspection and Navigation.

Section 432, Acts June 10, 1918, c. 95, § 2, 40 Stat. 603; June 30, 1932, c. 314, §§ 501, 502(b), 47 Stat. 415; May 27, 1936, c. 463, § 1, 49 Stat. 1380, provided

for decision of disagreements between local inspectors by the supervising inspector and review of decisions and actions of the board of local inspectors by the supervising inspector and by the Director of the Bureau of Marine Inspection and Navigation.

Section 433, Acts June 10, 1918, c. 95, § 3, 40 Stat. 603; June 30, 1932, c. 314, §§ 501, 502(b), 47 Stat. 415; May 27, 1936, c. 463, § 1, 49 Stat. 1380, related to powers of the Director of the Bureau of Marine Inspection and Navigation and supervising inspectors in reviewing actions and decisions.

Section 434, Act June 10, 1918, c. 95, § 4, 40 Stat. 603, related to regulations for enforcement of former sections 431-433 of this title.

§ 435. Reinspections and notice for repairs; enforcement of requirements

In addition to the annual or biennial inspection, the head of the department in which the Coast Guard is operating shall require the Coast Guard to examine, at proper times, inspected vessels arriving and departing to and from their respective ports, so often as to enable them to detect any neglect to comply with the requirements of law, and also any defects or imperfections becoming apparent after the inspection aforesaid, and tending to render the navigation of such vessels unsafe; and if there shall be discovered any omission to comply with the law, or that repairs have become necessary to make such vessel safe, the master shall at once be notified in writing as to what is required. All inspections and orders for repair shall be made promptly. When it can be done safely, repairs may be permitted to be made where those interested can most conveniently do them. And

whenever it is ascertained that any vessel subject to the provisions of this title or Acts amendatory or supplementary thereto, has been or is being navigated or operated without complying with the terms of the vessel's certificate of inspection regarding the number and class of licensed officers and crew, or without complying with the provisions of law and her said certificate as to the number or kind of life-saving or fire-fighting apparatus, or without maintaining in good and efficient condition her lifeboats, fire pumps, fire hose, and life preservers, or that for any other reason said vessel cannot be operated with safety to life, the owner or master of said vessel shall be ordered to correct such unlawful conditions, and the vessel may be required to cease navigating at once and to submit to reinspection; and in case the said orders shall not at once be complied with, the vessel's certificate of inspection shall be revoked, and the owner, master, or agent of said vessel shall immediately be given notice, in writing, of such revocation; and no new certificate of inspection shall be again issued to her until the provisions of this title or Acts amendatory or supplementary thereto have been complied with. Any vessel subject to the provisions of this title or Acts amendatory or supplementary thereto operating or navigating or attempting to operate or navigate after the revocation of her certificate of inspection and before the issuance of a new certificate, shall, upon application by a department or agency charged with the enforcement of such title or Acts, to any district court of the United States having jurisdiction, and by proper order or action of said court in the premises, be seized summarily by way of libel and held without privilege of release by bail or bond until a proper certificate of inspection shall have been issued to said vessel: *Provided*, That the owner, master, or person in charge of any vessel whose certificate shall have been so revoked may within thirty days after receiving notice of such revocation appeal to the head of the department in which the Coast Guard is operating for a re-examination of the case, and upon such appeal the said head of the department shall have power to revise, modify, or set aside such action of revocation, and direct the issuance to such vessel of her original certificate or of a new certificate of inspection; and in case the said head of the department shall so direct the issuance of a certificate, all judicial process against said vessel based on this section shall thereupon be of no further force or effect, and the vessel shall thereupon be released. R.S. § 4453; Mar. 3, 1905, c. 1454, § 2, 33 Stat. 1023; Mar. 4, 1913, c. 141, § 1, 37 Stat. 736; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097; June 4, 1956, c. 350, § 4, 70 Stat. 225.

Historical Note

Derivation. Act Feb. 28, 1871, c. 100, § 21, 16 Stat. 448.

References in Text. The words "this title" referred to in the text, in the expression "under this title or Acts amend-

atory or supplementary thereto", mean title 52 of the Revised Statutes. For distribution of title 52, sections 4399-4500, of the Revised Statutes, of which this section is a part, see note under section 170 of this title.

Codification. Prior to incorporation in the Code, R.S. § 4453 was amended by Act Mar. 3, 1905, which added after the words, "where those interested can most conveniently do them," at the end of the section as originally enacted, provisions for enforcement of compliance with the terms of the certificate of inspection and the provisions of law.

Upon incorporation into the Code, the words "Secretary of Commerce" were substituted for "Secretary of Commerce and Labor" to conform to Act Mar. 4, 1913. See note under section 362 of this title.

In the original text, the last clause of the first sentence read "he may apply for a re-examination of the case to the supervising inspector as provided in the preceding section." The preceding section, R.S. § 4452, was repealed by Act June 10, 1918, c. 95, § 5, 40 Stat. 603, but provision for re-examinations by supervising inspectors was made by other sections of that Act, incorporated as former sections 431-434 of this title.

1956. Amendment. Act June 4, 1956, amended language of section generally to reflect the changeover from an annual inspection to a biennial inspection of cargo ships, the transfer of Coast Guard functions to the head of the department in which the Coast Guard is operating, and certain other technical changes.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain excep-

tions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under section 1 and 3 of Title 14, Coast Guard.

References to local inspectors and supervising inspectors were changed to Coast Guard officials, "Commandant of the Coast Guard" was substituted for "Secretary of Commerce", and a provision at end of first sentence providing for application to the supervising inspector for reexamination of the requirements of local inspectors was omitted, on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Legislative History: For legislative history and purpose of Act June 4, 1956, see 1956 U.S. Code Cong. and Adm. News, p. 2641.

§ 436. Penalty for failure to make repairs on notice

If any master or owner of any inspected vessel shall refuse or neglect to comply with the requirements of the examining official, made in pursuance of section 435 of this title, and shall, contrary thereto and while the same remains unreversed, employ the vessel by navigating her, the master and owner shall be liable to a penalty of \$500 for each offense, one-half for the use of the informer; for which sum the vessel itself shall be liable, and may be seized and proceeded against by libel in any district court having jurisdiction; and the master and owner, and the vessel itself, shall, in addition thereto, be liable for any damage to passengers and their baggage which shall occur from any defects as stated in the notice prescribed by section 435 of this title. R.S. § 4454; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097; June 4, 1956, c. 350, § 5, 70 Stat. 226.

Historical Note

Derivation. Act Feb. 28, 1871, c. 100, § 21, 16 Stat. 448.

1956 Amendment. Act June 4, 1956, amended section by substituting the words "inspected vessel" for "steamer", and "examining" for "Coast Guard".

Transfer of Functions. "Coast Guard official" was substituted for "local inspectors", and phrase "by the supervising inspector" following "unreversed" was omitted, on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Cross References

Misconduct or neglect of ship officers or owners causing death, punishment for, see section 1115 of Title 18, Crimes and Criminal Procedure.

§§ 437–440. Omitted**Historical Note**

Codification. Sections have been omitted from the Code for the reasons stated below.

Section 437, R.S. § 4455, related to the modification of actions of inspectors of one district by the inspectors of another district. The offices of such inspectors were abolished by 1946 Reorg. Plan No. 3, §§ 101–104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097. See note under section 1 of this title.

Section 438, R.S. § 4456, related to inspections by local boards of inspectors in other districts not having boards. Such boards were abolished by 1946 Reorg. Plan No. 3, §§ 101–104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097. See note under section 1 of this title.

Section 439, R.S. § 4410; Acts May 22, 1912, c. 130, § 1, 37 Stat. 116; June 30, 1932, c. 314, §§ 501, 502(b), 47 Stat. 415; May 27, 1936, c. 463, § 1, 49 Stat. 1380, related to reports by supervising inspectors and examination of actions of such inspectors and the local boards. Such boards and offices were abolished by 1946 Reorg. Plan No. 3, §§ 101–104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097. See note under section 1 of this title.

Section 440, R.S. § 4451; Acts June 19, 1886, c. 421, § 1, 24 Stat. 79; Apr. 4, 1888, c. 61, § 2, 25 Stat. 80; May 28, 1896, c. 252, § 6, 29 Stat. 179; Mar. 4, 1913, c. 142, § 1, 37 Stat. 785, which related to payment of witness fees under section 239 of this title, was superseded by the amendment of that section by Act May 27, 1936, c. 463, § 4, 49 Stat. 1381.

**CHAPTER 15.—TRANSPORTATION OF PAS-
SENGERS AND MERCHANDISE BY
STEAM VESSELS**

Sec.

- 451. Number of passengers allowable.
- 452. Penalty for carrying too many passengers.
- 453. Special permit for excursions.
- 454. Regulations as to regattas or marine parades.
- 455. Enforcement of regulations; use of public or private vessels.
- 456. Transfer of authority to regulate to head of other department.
- 457. Penalties for violations of regulations.
- 458. Vessels on Great Lakes carrying persons not passengers.
- 459. Life preservers.
- 460. Count or list of passengers.
- 460a. Same; exemption of certain vessels.
- 461. Penalty for failure to keep list of passengers.
- 462. Recovery of penalties.
- 463. Precautions against fire.
- 463a. Same; additional precautions.
- 464. Fire pumps and hose; sprinkler systems.
- 465. Transferred.
- 466. Repealed.
- 466a. Rules as to accommodations for export animals.
- 466b. Violation of rules; penalty.
- 467. Discharge of petroleum at terminal ports.
- 468, 469. Repealed.
- 470. Watchmen on passenger steamers.
- 471. Punishment for failure to keep watchmen.
- 472. Fire extinguishers.
- 473. Steering, navigating, and signaling apparatus.
- 474. Boats for river steamers.
- 475. Life preservers for river steamers.
- 476. Fire buckets and axes for river steamers.
- 477. Stairways and gangways on river steamers.
- 478. Accommodation of deck passengers.
- 479. Penalty for not providing proper accommodations for passengers.
- 480. River steamers to be anchored when navigation is unsafe.
- 481. Regulations as to life-saving appliances on ocean, lake, and sound steamers and foreign vessels.
- 482. Water-tight bulkheads in lake steamers carrying passengers.
- 483. Water-tight bulkheads not required on certain steamers.
- 484-487. Repealed.
- 488. Substitute for second operator of radio apparatus on cargo steamers navigating the Great Lakes.

Sec.

- 489. Use of instruments for security of life to be approved.
- 490. Barges carrying passengers.
- 491. Liability of master and owners for damage to passengers.
- 492. Copies of laws governing marine inspection to be kept on passenger vessels.
- 493. Name of steamer exhibited.
- 494. Duties of customs officers.
- 495. Penalty for omission of duty by customs officers.
- 496. Registry or enrollment denied to vessels not complying with law.
- 497. Penalty for failure to comply with provisions.
- 498. Penalty in cases not provided for.

§ 451. Number of passengers allowable

The Coast Guard officials shall state in every certificate of inspection granted to vessels carrying passengers, other than ferryboats, the number of passengers of each class that any such vessel has accommodation for and can carry with prudence and safety. They shall report their action to the Commandant of the Coast Guard, who may at any time order the number of such passengers decreased, giving his reasons therefor in writing, and thereupon the Coast Guard officials shall change the certificate of inspection of such vessel to conform with the decision of the Commandant of the Coast Guard. Whenever the allowance of passengers shall be increased by any Coast Guard officials such increase shall be reported to the Commandant of the Coast Guard, together with the reasons therefor, and such increase shall not become effective until the same has been approved in writing by the Commandant of the Coast Guard. R.S. § 4464; Feb. 14, 1917, c. 63, § 1, 39 Stat. 918; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Derivation. Act Feb. 28, 1871, c. 100, § 48, 16 Stat. 454.

Codification. R.S. § 4464, as originally enacted, read as follows: "The inspectors shall state in every certificate of inspection granted to steamers carrying passengers, other than ferry-boats, the number of passengers of each class that any such steamer has accommodations for, and can carry with prudence and safety."

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize

their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

References to the board of local inspectors and the supervising inspector of the district were changed to Coast Guard of-

officials and Commandant of the Coast Guard, respectively, on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Notes of Decisions

Computation of passengers 3
Ferryboats 1
Tonnage 4
Towing vessels 2

1. Ferryboats

This section and sections 452 and 453 of this title, respecting the number of passengers that may lawfully be carried by a passenger steamer, have no application to a ferryboat, though temporarily employed as an excursion boat. *Schwerin v. North Pac. C. R. Co.*, D.C. Cal.1888, 38 F. 710.

A steamboat, having obtained a certificate as a general passenger boat, and not as a ferryboat, does not come within the exception in this section. *The Hazel Kirke*, D.C. and C.C.N.Y.1885, 25 F. 601.

A ferryboat, when turned aside from its proper business to carry passengers on excursions, ceases quoad hoc to be a ferryboat, and as to that trip or voyage, it becomes, to all intents and purposes, a passenger boat. *U. S. v. Burlington, etc., Ferry Co.*, D.C.Iowa 1884, 21 F. 331.

Where a boat is licensed to run as a ferryboat between a certain town and a point on the opposite bank of the river, the carrying of passengers and merchandise to towns above and below the ferry limits forbids the idea that she was exclusively engaged in ferrying. *The Bright Star*, C.C.Mo.1868, Woolw. 266, 4 Fed.Cas.No.1,880.

The ordinary character of a ferryboat, daily employed as such, and occasionally as a tug boat, is not changed by being employed in several trips in conveying visitors to a state fair, three miles distant, and penalties are not incurred for failing to have the boat inspected and licensed as a passenger boat, since the

legislature evidently had in view the inspection of vessels constructed for voyages or trips of more than an hour's duration. *U. S. v. The Steamboat Ottawa*, D.C.Mich.1857, Newb.Adm. 536, 27 Fed.Cas.No.15,976.

2. Towing vessels

A steamer usually employed as a tow boat, is liable to the penalties for having transported about one hundred passengers on a trip a distance of twelve or fifteen miles each way and receiving pay for the same when it was not inspected and licensed as a passenger boat, since the question is not whether the steamer has been usually employed in the towing business, but what was its employment and service at the time complained of. *U. S. v. The Propeller Echo*, C.C.N.Y. 1860, 4 Blatchf. 446, 25 Fed.Cas.No.15,021.

A tugboat used for towing vessels to and fro which is accustomed to take on board the masters of the vessels thus towed and sometimes one or more of the crew and carry them from the shore to their vessels, or vice versa, is not a "passenger vessel" or "a vessel carrying passengers." 1883, 17 Op.Att'y.Gen. 599.

3. Computation of passengers

In estimating the number of passengers, no deduction is to be made for children or persons not paying, but the crew are excluded. *U. S. v. The Louisa Barbara*, D.C.Pa.1833, Fed.Cas.No.15,632.

4. Tonnage

In estimating the tonnage of a vessel bringing passengers from a foreign country, the custom house measurement of the port of arrival is to be taken. *U. S. v. The Louisa Barbara*, D.C.Pa.1833, Fed.Cas.No.15,632. See, also, *U. S. v. The Anna*, D.C.Md.1854, Fed.Cas.No.14,457, affirmed Fed.Cas.No.14,458.

§ 452. Penalty for carrying too many passengers

It shall not be lawful to take on board of any vessel a greater number of passengers than is stated in the certificate of inspection, and for every violation of this provision the master or owner shall be liable to any person suing for the same to forfeit the amount of passage money and \$10 for each passenger beyond the number allowed.

The master or owner of the vessel, or either or any of them, who shall knowingly violate this provision shall be liable to a fine of not more than \$100 or imprisonment of not more than thirty days, or both. R.S. § 4465; Feb. 14, 1917, c. 63, § 2, 39 Stat. 918.

Historical Note

Derivation. Act Feb. 28, 1871, c. 100, § 48, 16 Stat. 454.

Codification. R.S. § 4465, prior to incorporation in the Code, was amended by Act Feb. 14, 1917, which added the second paragraph.

Cross References

Penalty as lien upon vessel, see section 462 of this title.

Notes of Decisions

Amount of recovery 8
Costs 9
Damages, liability for 4
Enforcement procedure 7
Excuses for violations 6
Freight steamer carrying passengers 2
Liability
 Damages 4
 Penalty 3
Separate violations 5
Vessels and waters within section 1
Waters within section 1

1. Vessels and waters within section

This section is applicable to a steamboat engaged in carrying passengers on a navigable water of the United States between ports of the same state only. *The City of Salem*, D.C.Or.1889, 38 F. 762, 4 L.R.A. 125.

The waters of Jamaica Bay, New York, are public navigable waters of the United States, and such waters are under the direct control of Congress in the exercise of the constitutional power to regulate interstate and foreign commerce, and this section is a regulation calculated to promote convenient and safe navigation on such waters, and is applicable to all vessels navigating such waters, although it is not shown that they were engaged in transporting passengers or freight between places outside the state of New York, and places within that state. *The Hazel Kirke*, D. C. and C.C.N.Y.1885, 25 F. 603.

Use of the certificate of inspection is sufficient to require the conclusion that boat is subject to this section. *Id.*

A steamboat employed by a railroad company to transport passengers on Jamaica Bay, New York, in connection with a railroad forming a part of the railroad

system of the whole country, is engaged in interstate commerce to an extent sufficient to bring her within this section. *Id.*

2. Freight steamer carrying passengers

A libel against a vessel inspected and licensed as a freight steamer for carrying passengers in violation of law is not properly brought under either this section or section 453 of this title, but is properly brought under section 487 of this title. *U. S. v. The Frank Sylvia*, D. C.Cal.1883, 37 F. 155.

3. Liability—Penalty

A tug which, because they crowded on board without the consent of the owner, carried more than the permitted number of passengers on a short excursion on a river, for which no fare was charged, was not subject to the penalty for overloading imposed by this section and section 462 of this title. *The Melville*, Or. 1914, 213 F. 620, 130 C.C.A. 212.

Where a mate appointed master in a foreign port knowingly sails with a larger number of passengers than that allowed by law, he is liable for the fine for taking an excessive number of passengers on board, though the agreement of shipment was made by the former master. *U. S. v. Morton*, D.C.Mass.1867, Fed.Cas.No.15,822.

4. — Damages

A steamship is liable in damages to passengers who, although they were sold second-class tickets, were given only the accommodations of steerage passengers, and who suffered great discomfort from lack of proper food and water and from being overcrowded in unclean and badly ventilated quarters, and while the obtaining of an inspector's certificate permitting the vessel to take more passen-

gers than she actually carried may relieve her from prosecution for the statutory penalty for carrying an excessive number, it does not relieve her from liability to passengers for a violation of her implied agreement to furnish them with reasonable accommodations. *Pacific Steam Whaling Co. v. Grismore*, Wash.1902, 117 F. 68, 54 C.C.A. 545.

The refusal of a government inspector to allow any more passengers to go on board an excursion steamer justifies her master in leaving before the advertised time, and is a good defense to a suit in tort by one having a return ticket who was left at the outward port. *Hughson v. Winthrop Steamboat Co.*, 1902, 64 N. E. 74, 181 Mass. 325, 58 L.R.A. 432.

5. Separate violations

This section gives a separate penalty for every violation. *Pollock v. The Sea Bird*, D.C.N.Y.1880, 3 F. 573, 574. See, also, *The Laura M. Starin*, D.C.N.Y.1881, 11 F. 177.

6. Excuses for violations

A steamship which left San Francisco for Seattle a few days after the destruction of the former city by earthquake and fire was not subject to the penalty nor liable to such passengers in damages for the inconvenience and privation resulting to them from the overcrowding and from a shortage of water, where the excess of passengers was due to the confusion caused by the destruction of the city and the company's office and occurred notwithstanding its efforts to prevent it, and the shortage was due to the company's inability to procure water or sufficient coal for its condenser in San Francisco, and to bad weather which prolonged the voyage. *The Charles Nelson*, D.C.Wash.1906, 149 F. 846.

A court of admiralty may, in the exercise of a judicial discretion, refuse to impose the penalty where because of extraordinary condition existing such imposition would be inequitable. *Id.*

It appearing that the persons in excess of the allowed number aboard the boat were intruders and that the boat moved from her landing to another convenient place to avoid a crowd of people who it was feared might force their way upon her and endanger her, the penalties were not incurred. *The Geneva*, D.C.Pa.1888, 26 F. 649.

7. Enforcement procedure

An indorsement on an inspector's certificate that a steamship had been pro-

vided with accommodations for additional passengers should be rejected as evidence of the fact that such accommodations had been provided, when all the testimony shows conclusively that there were no such accommodations on the ship. *The Valencia*, D.C.Wash.1901, 110 F. 221, affirmed 117 F. 68, 54 C.C.A. 454.

This section and section 462 of this title do not require that there shall be an election to pursue one of two remedies and adoption of one is not an abandonment of the other, and for recovery of the penalties imposed on the master and owners personally, a common-law action of debt is the appropriate remedy, but the lien of the penalties is not released by such action, and may be enforced by a suit in rem in the admiralty, since these remedies are cumulative. *Hatch v. The Steam-Boat Boston*, D.C. Pa.1880, 3 F. 807.

On a libel under this section for penalty for taking a greater number of passengers on board of a steamer than is stated in the certificate of inspection, any court within whose territorial jurisdiction the vessel may be at the time of the commencement of the suit and the attachment of the vessel by the marshal has jurisdiction of the cause. *Pollock v. The Sea Bird*, D.C.N.Y.1880, 3 F. 573.

8. Amount of recovery

Where it is found that a steamboat carried 777 passengers more than the number allowed by law, but the libel, in an action to enforce the penalty therefor, only charges an excess of 677, and no application is made to amend the libel, the steamboat will only be liable to a penalty for each of 677 passengers. *The Columbia*, D.C.N.Y.1889, 39 F. 617, reversed on other grounds 50 F. 441, 1 C. C.A. 526.

For violation of this section the penalty prescribed by section 497 of this title may be recovered. *The Idaho*, D.C. Or.1886, 29 F. 187.

9. Costs

In an action against a steamboat to recover the penalties under this section for carrying an unlawful number of passengers, although the defense was established that the persons in excess of the allowed number were intruders against the will of the officers of the boat, and therefore that the penalties had not been incurred, yet there being apparently good ground for the suit, and the case being one proper for judicial investigation, and the answer not explicitly setting forth the real ground of

defense, while the libel must be dismissed, it should be without costs to

the respondent. The Geneva, D.C.Pa. 1888, 26 F. 647.

§ 453. Special permit for excursions

If any passenger vessel engages in excursions, the Coast Guard officials shall issue to such vessel a special permit, in writing, for the occasion, in which shall be stated the additional number of passengers that may be carried and the number and kind of life-saving appliances that shall be provided for the safety of such additional passengers; and they shall also, in their discretion, limit the route and distance for such excursions: *Provided, however,* That the issuance of such special permit shall be reported by the Coast Guard officials to the Commandant of the Coast Guard, and such special permit shall not be effective until approved by the said Commandant of the Coast Guard. R.S. § 4466; Feb. 14, 1917, c. 63, § 3, 39 Stat. 918; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Derivation. Act Feb. 28, 1871, c. 100, § 48, 16 Stat. 454.

Codification. R.S. § 4466, prior to incorporation in the Code, was amended by Act Feb. 14, 1917, which substituted "vessel" for "steamer" and "board of local inspectors" for "inspectors," and added the proviso.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 28, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Of-

ficers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

References to the board of local inspectors and the supervising inspector of the district were changed to Coast Guard officials and Commandant of the Coast Guard, respectively, on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Notes of Decisions

Collateral attack 5

Definitions 1

Evidence 7

Inability to prevent overcrowding

Indictment 6

Oral permit 3

Violations generally 2

gers additional to the number authorized by its certificate, and does not go or purpose to go out of the waters where it is authorized by its certificate to ply, it is not an "excursion," and no special permit is necessary. The Pope Catlin, D.C.Ga.1887, 31 F. 408.

2. Violations generally

1. Definitions

Where a steamer does not carry, or purpose to carry, a number of passen-

A libel for the offense of using a freight boat for the carrying of passengers without having been inspected as a passenger steamer, and obtaining a cer-

tificate specifying the number of passengers she can carry is not properly brought under this section. *U. S. v. The Frank Sylvia*, D.C.Cal.1888, 37 F. 155.

A vessel plying between two ports in the same state, upon any navigable water of the United States, but engaged exclusively in the domestic commerce of the state, is within the admiralty jurisdiction, and when a steam ferryboat, contrary to this section, carries passengers on an excursion, largely in excess of the number allowed by her permit, and fails to carry the required number of life-preservers, she is guilty of a marine tort, and a federal district court has jurisdiction of a libel in personam against her owners and master to recover the penalty prescribed. *U. S. v. Burlington & Henderson County Ferry Co.*, D.C. Iowa 1884, 21 F. 331.

3. Oral permit

Where claimant pleaded in his answer an oral permission to carry additional passengers on excursions, under this section, this defense could not avail the claimant, and that part of the answer must be stricken out upon exception as immaterial. *Pollock v. The Sea Bird*, D.C.N.Y.1880, 3 F. 573. See, also, *Pollock v. The Laura*, D.C.N.Y.1880, 5 F. 133, affirmed 5 S.Ct. 881, 114 U.S. 411, 29 L.Ed. 147.

4. Inability to prevent overcrowding

In a suit against a steamboat to recover penalties imposed by this section, and made a lien by section 462 of this title, the libel was dismissed, but without any costs to the respondent, where it appeared that a Sunday excursion had been planned, that the master had given the clerk of the boat a positive order to cease selling tickets and take in the gangplank as soon as three hundred tickets were sold (the limit they had the right to carry on the boat), that this order was strictly obeyed, that after the gangplank was taken in a large number of persons got aboard by way of a wharf boat, a coal flat, and skiffs, that the officers and crew exerted themselves to the utmost to prevent persons getting on the boat after the gangplank was pulled in, and to avoid the immense mass of people on the wharf, the captain backed the boat out into the river

and took it a few hundred yards down the wharf. *The Geneva*, D.C.Pa.1886, 26 F. 647.

5. Collateral attack

Where an excursion permit is not void upon its face, was not fraudulently obtained, and had not been set aside, its validity is not one of the issues upon the charge of carrying more passengers than allowed by law, and is a sufficient protection to the steamer against liability up to the number allowed. *The Harlem*, D.C.N.Y.1885, 27 F. 236.

6. Indictment

An indictment under section 1115 of Title 18, for a violation of the provisions of this section as to carrying an excess of passengers resulting in loss of life was sufficient. *U. S. v. Holtzhauer*, C.C.N.J.1889, 40 F. 76.

7. Evidence

In a proceeding to enforce a lien against an excursion steamer, allowed to carry three thousand passengers, for carrying more passengers than the law allowed, the evidence of two passengers of the count made by them as the crowd was moving rapidly over a wide gangplank is not sufficient to overcome the evidence of the purser and his assistant of the count made by them of the tickets and money actually collected, and, accepting the evidence of the purser, the court found that the vessel did not carry passengers in excess of the number allowed by law, and ordered that the decree of the district court be reversed and the libel dismissed. *The Columbia*, N.Y. 1892, 50 F. 441, 1 C.C.A. 526.

Upon a charge that an excursion steamer carried more than the number allowed by its special permit, evidence of the defendants as to perfect arrangements for shutting off passengers when the boats were properly loaded, together with the testimony of the superintendent that in this case he did count them and shut them off as usual, when within fifty of the number allowed, is not overcome by the unverified count of one person, made in the twilight while the passengers went off with a rush and with the hurry and confusion usual on a later exit. *The Harlem*, D.C.N.Y.1885, 27 F. 236.

§ 454. Regulations as to regattas or marine parades

The Commandant of the Coast Guard is authorized and empowered in his discretion to issue from time to time regulations, not contrary to law, to promote the safety of life on navigable waters during re-

gattas or marine parades. Apr. 28, 1908, c. 151, § 1, 35 Stat. 69; Mar. 4, 1913, c. 141, § 1, 37 Stat. 736; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Codification. Upon incorporation into the Code, the words "Secretary of Commerce" were substituted for "Secretary of Commerce and Labor" to conform to Act Mar. 4, 1913, which provided that the Secretary of Commerce and Labor, should, thereafter, be called the Secretary of Commerce.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 28, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Execu-

tive Departments and Government Officers and employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

"Commandant of the Coast Guard" was substituted for "Secretary of Commerce" on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Notes of Decisions

1. Generally

The making of rules and regulations under Act May 19, 1896, 29 Stat. 122 (repealed) to insure the safety of passengers on excursion steamers, etc., at regattas or yacht races, and their subsequent enforcement by revenue cutters, was "business within the jurisdiction"

of the Department of Commerce and Labor, and when revenue vessels were detailed for that purpose they were subject to the direction and control of the Secretary of that department in all matters relating to such business. 1903, 25 Op. Atty. Gen. 27.

§ 455. Enforcement of regulations; use of public or private vessels

To enforce such regulations the Commandant of the Coast Guard may detail any public vessel in the service of the Coast Guard and make use of any private vessel tendered gratuitously for the purpose, or upon the request of the Commandant of the Coast Guard the head of any other department may enforce the regulations issued under sections 454 and 456 of this title by means of any public vessel of such department and of any private vessel tendered gratuitously for the purpose. Apr. 28, 1908, c. 151, § 2, 35 Stat. 69; Mar. 4, 1913, c. 141, § 1, 37 Stat. 736; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Codification. Upon incorporation into the Code, the words "Secretary of Commerce" were substituted for "Secretary

of Commerce and Labor" to conform to Act Mar. 4, 1913. See note under section 454 of this title.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 28, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from

the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

"Commandant of the Coast Guard" was substituted for "Secretary of Commerce" and a reference to the Department of Commerce was changed to Coast Guard on authority of 1948 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

§ 456. Transfer of authority to regulate to head of other department

The authority and power bestowed upon the Commandant of the Coast Guard by sections 454 and 455 of this title may be transferred for any special occasion to the head of another department by the President whenever in his judgment such transfer is desirable. Apr. 28, 1908, c. 151, § 3, 35 Stat. 69; Mar. 4, 1913, c. 141, § 1, 37 Stat. 736; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Codification. Upon incorporation into the Code, the words "Secretary of Commerce" were substituted for "Secretary of Commerce and Labor" to conform to Act Mar. 4, 1913. See note under section 454 of this title.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 28, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5,

Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

"Commandant of the Coast Guard" was substituted for "Secretary of Commerce" on authority of 1948 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

§ 457. Penalties for violations of regulations

For any violation of regulations issued pursuant to sections 454-456 of this title the following penalties shall be incurred:

(a) A licensed officer shall be liable to suspension or revocation of license in the manner now prescribed by law for incompetency or misconduct.

(b) Any person in charge of the navigation of a vessel other than a licensed officer shall be liable to a penalty of \$500.

(c) The owner of a vessel (including any corporate officer of a corporation owning the vessel) actually on board shall be liable to a penalty of \$500, unless the violation of regulations shall have occurred without his knowledge.

(d) Any other person shall be liable to a penalty of \$250.

The Commandant of the Coast Guard is authorized and empowered to mitigate or remit any penalty herein provided for in the manner prescribed by law for the mitigation or remission of penalties for violation of the navigation laws. Apr. 28, 1908, c. 151, § 4, 35 Stat. 69; Mar. 4, 1913, c. 141, § 1, 37 Stat. 736; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Codification. Upon incorporation into the Code, the words "Secretary of Commerce" were substituted for "Secretary of Commerce and Labor" to conform to Act Mar. 4, 1913. See note under section 454 of this title.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 28, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Execu-

tive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

"Commandant of the Coast Guard" was substituted for "Secretary of Commerce" on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

§ 458. Vessels on Great Lakes carrying persons not passengers

Any steam vessel engaged in the business of towing vessels, rafts, or water craft of any kind, also steam vessels engaged in oyster dredging and planting, and fishing steamers engaged in food fishing on the Great Lakes and all other inland waters of the United States, and not carrying passengers, may be authorized and licensed by the Coast Guard to carry on board such number of persons, in addition to its crew, as the Coast Guard, in its judgment, shall deem necessary to carry on the legitimate business of such towing, oyster and fishing steamers, not exceeding, however, one person to every net ton of measurement of said steamer: *Provided, however,* That the person so allowed to be carried shall not be carried for hire. July 9, 1886, c. 755, § 1, 24 Stat. 129; Feb. 23, 1901, c. 465, 31 Stat. 800; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Codification. This section and section 459 of this title are from Act Feb. 23, 1901. That Act was entitled "An act to amend section forty-four hundred and twenty-seven, Title Fifty-Two, of the Revised Statutes, relating to inspectors of hulls and boilers." But the enacting clause and amendatory provisions of said Act began as follows: "Be it enacted, * * * That the amendment to section forty-four hundred and twenty-seven, approved July ninth, eighteen hundred and eighty-six, entitled 'An act relating to the licensing of vessels engaged in towing to carry persons in addition to their crews,' be amended to read as follows:"

The provisions which followed were substitutes for those of sections 1 and 2 of Act July 9, 1886, and must be regarded as amendatory thereof, the subject-matter of neither Act having any relation to the provisions of R.S. § 4427, mentioned in the title of said amendatory act.

Act July 9, 1886, referred to above, was as follows: "That any steam-vessel engaged in the business of towing vessels, rafts, or water-craft of any kind, and not carrying passengers, may be authorized and licensed by the supervising inspector of the district in which said steamer shall be employed, to carry on board such number of persons, in addition to its crew, as the supervising inspector in his judgment, shall deem necessary to carry on the legitimate business of such towing steamers, not exceeding, however, one person to every

net ton of measurement of said steamer: Provided, however, That the person so allowed to be carried shall not be carried for hire."

Transfer of functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

"Coast Guard" was substituted for "supervising inspector of the district in which said steamer shall be employed" and for "supervising inspector" on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

§ 459. Life preservers

Every steam vessel licensed under section 458 of this title shall carry and have on board, in accessible places, one life preserver for every person allowed to be carried, in addition to those provided for the crew of such vessel. July 9, 1886, c. 755, § 2, 24 Stat. 129; Feb. 23, 1901, c. 465, 31 Stat. 801.

Historical Note

Codification. Prior to incorporation in the Code, Act Feb. 23, 1901, reenacted Act July 9, 1886, without change. See note under section 458 of this title.

§ 460. Count or list of passengers

The master of every passenger steamer shall keep a correct count of all the passengers received and delivered from day to day, which count shall be open to the inspection of the Coast Guard and officers

of the customs at all times, and the aggregate number of passengers shall be furnished to the Coast Guard as often as called for: *Provided, however,* That a correct list of passengers received and delivered from day to day shall be kept, instead of a correct count, by the masters of seagoing passenger steamers in the coastwise trade and by the masters of passenger steamers on the Great Lakes on routes exceeding three hundred miles: *Provided further,* That nothing herein shall affect existing laws relative to vessels running between this country and foreign ports. R.S. § 4467; Feb. 27, 1877, c. 69, § 1, 19 Stat. 252; May 28, 1908, c. 212, § 3, 35 Stat. 425; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Derivation. Act Feb. 28, 1871, c. 100, § 49, 16 Stat. 454.

Codification. R.S. § 4467, as enacted in the Revised Statutes, was as follows: "The master of every passenger-steamer shall keep a correct list of all the passengers received and delivered from day to day, noting the places where received and where landed, which record shall be open to the inspection of the inspectors and officers of the customs at all times; and the aggregate number of passengers shall be furnished to inspectors as often as called for; but on routes not exceeding one hundred miles, the number of passengers, if kept, shall be sufficient."

It was amended by Act Feb. 27, 1877, by substituting "open" for "opened" preceding "to the inspection".

It was again amended by Act May 28, 1908, to read as set forth here.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain excep-

tions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 28, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

References to inspectors were changed to Coast Guard on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Cross References

Steorage passengers, regulation of vessels carrying, see chapter 6 of this title.

§ 460a. Same; exemption of certain vessels

Notwithstanding any provision of law to the contrary, no collector of customs shall require the master or owner of a vessel arriving, otherwise than by sea, at a port or place in the United States on the Great Lakes, or their connecting or tributary waters, from a port or place in the Dominion of Canada to furnish a list of passengers on board such vessel. Aug. 7, 1946, c. 783, 60 Stat. 883.

§ 461. Penalty for failure to keep list of passengers

Every master of any passenger steamer who fails, through negligence or design, to keep a count or list of passengers as required by section 460 of this title shall be liable to a penalty of \$100. R.S. § 4468; May 28, 1908, c. 212, § 4, 35 Stat. 425.

Historical Note

Derivation. Act Feb. 28, 1871, c. 100, § 49, 16 Stat. 454.

Codification. R.S. § 4468, prior to incorporation in the Code, was amended by Act May 28, 1908, which inserted "count or" preceding "list of passengers".

§ 462. Recovery of penalties

The penalties imposed by sections 452 and 461 of this title shall be a lien upon the vessel in each case; but a bond may, as provided in other cases, be given to secure the satisfaction of the judgment. R.S. § 4469.

Historical Note

Derivation. Act Feb. 28, 1871, c. 100, § 49, 16 Stat. 454.

Notes of Decisions

Attachment 5
Burden of proof 10
Costs 14
Enforcement of lien 2
Evidence 11
Judgment 12
Jurisdiction 6
Laches 9
Lien 2-4
 Enforcement 2
 Loss 3
 Release 4
Loss of lien 3
Parties 7
Pleading 8
Release of lien 4
Remedy generally 1
Remission of penalty 13
Seizure or attachment 5

brought under this section. U. S. v. The Frank Sylvia, D.C.Cal.1888, 37 F. 155.

A libel in rem may be maintained in the district court in admiralty for the penalty imposed by this section for overcrowding a passenger vessel. The Arctic, D.C.Ohio 1881, 11 F. 177.

Under this section the holder of a steamship ticket cannot recover in tort from the steamship company by reason of the vessel leaving before the agreed time, by which the ticket holder is prevented from taking passage thereon, when such act is the result of the act of the government inspector. *Hughson v. Winthrop Steamboat Co.*, 1902, 64 N. E. 74, 181 Mass. 325, 58 L.R.A. 432.

2. Lien—Enforcement

The proper way to enforce the lien is by proceedings in rem against the vessel. *The Laura M. Starin*, D.C.N.Y. 1881, 11 F. 177.

It is not necessary that the vessel should be attached, before the filing of the libel, to enforce the lien. *Hatch v. The Boston*, D.C.Pa.1880, 3 F. 807.

3. — Loss

The lien is not divested by a sale to a bona fide purchaser. *Hatch v. The Boston*, D.C.Pa.1880, 3 F. 807.

1. Remedy generally

This section gives direct remedy in admiralty against the vessel for the recovery of the penalty. *The Sidonian*, C.C.La.1889, 38 F. 440. See, also, *Pollock v. The Sea Bird*, D.C.N.Y.1880, 3 F. 573.

A libel for the offense of using a freight boat for the carrying of passengers without having been inspected as a passenger steamer, and obtaining a certificate specifying the number of passengers she can carry, is not properly

4. — Release

Bringing of an action of debt against the master and owners of the boat, and prosecuting the same to judgment, does not release the lien. *Hatch v. The Boston*, D.C.Pa.1880, 3 F. 807.

5. Seizure or attachment

Before a libel is filed there should be a seizure of the vessel. *U. S. v. The Frank Sylvia*, D.C.Cal.1888, 37 F. 155. See, also, *The Tug May*, C.C.Wis.1874, 6 Biss. 243, 16 Fed.Cas.No.9,330.

A private person, proposing to sue for the penalties, cannot exercise the right of seizure. *Hatch v. The Steam-Boat Boston*, D.C.Pa.1880, 3 F. 807.

It is not necessary that the vessel should have been attached, before the filing of the libel, to enforce the statutory lien. *Id.*

The objection that there was no actual seizure before filing the libel may be waived by the execution of a delivery bond under the statute. *The Lewellen*, D.C.Ind.1868, 4 Bliss. 156, 15 Fed.Cas.No. 8,307.

6. Jurisdiction

A mere clerical error in docketing the case will not oust the jurisdiction of the court. *Hatch v. The Boston*, D.C.Pa. 1880, 3 F. 807.

On a libel for penalty for taking a greater number of passengers on board of a steamer than is stated in the certificate of inspection, any court within whose territorial jurisdiction the vessel may be at the time of the commencement of the suit and the attachment of the vessel by the marshal has jurisdiction of the cause. *Pollock v. The Sea Bird*, D.C.N.Y.1880, 3 F. 573.

7. Parties

The United States is not a necessary party to the suit instituted under this section. *The Sidonian*, C.C.La.1889, 38 F. 440, 442. See, also, *Pollock v. The Sea Bird*, D.C.N.Y.1880, 3 F. 573; *The Laura M. Starin*, D.C.N.Y.1881, 11 F. 177.

A suit in admiralty to enforce the lien need not be prosecuted in the name of the United States. *Hatch v. The Boston*, D.C.Pa.1880, 3 F. 807.

This section implies the right of the private party who proceeds to enforce the penalties to sue therefor in his own name. *Id.*

8. Pleading

A count charging that defendants took on board their vessel more passengers

than were allowed by law, by reason of which it became unmanageable, and that decedent's death by drowning was caused thereby, is sufficient. *U. S. v. Holtzhauser*, C.C.N.J.1889, 40 F. 76.

Where the owner of the boat answered, neither admitting nor denying the allegations as to the number of passengers, but left libellant to prove his allegation, giving as a reason for not answering that his answer might subject claimant to a penalty, admiralty rule 31, providing that defendant may object by his answer to answer any allegation or interrogatory contained in the libel, which will expose him to any prosecution or punishment for a crime or for any penalty or any forfeiture of his property for any penal offense, applied to such case, and protected defendant from answering further. *Pollock v. The Sea Bird*, D.C.N.Y.1880, 3 F. 573. See, also, *Pollock v. The Laura*, D.C.N.Y.1880, 5 F. 133, affirmed 5 S.Ct. 881, 114 U.S. 411, 29 L.Ed. 147.

Where claimant pleaded in his answer an oral permission to carry additional passengers on excursions, under section 453 of this title, which requires that the permission should be in writing, this defense could not avail the claimant, and that part of the answer must be stricken out upon exception as immaterial. *Id.*

The libel need not allege that the libellant was a passenger, or that he was an informer, or that he sued as such, nor need it set out the names of the passengers taken on board. *Pollock v. The Sea Bird*, D.C.N.Y.1880, 3 F. 573. See, also, *Pollock v. The Laura*, D.C.N.Y.1880, 5 F. 133, affirmed 5 S.Ct. 881, 114 U.S. 411, 29 L.Ed. 147; *The Laura M. Starin*, D.C.N.Y.1881, 11 F. 177.

There should be an averment of seizure, but the objection that there was no such averment may be waived by the execution of a delivery bond under the statute. *The Lewellen*, D.C.Ind.1868, 4 Bliss. 156, Fed.Cas.No.8,307.

9. Laches

The fact that the libellant does not proceed against the vessel until the recovery of the judgment, in the personal action against the master and owners, does not constitute laches. *Hatch v. The Boston*, D.C.Pa.1880, 3 F. 807.

10. Burden of proof

In proceedings to recover a penalty for violations of the navigation laws, the burden of proof is on the prosecution. *The Pope Catlin*, D.C.Ga.1887, 31 F. 408.

11. Evidence

A libel against a steam vessel by the United States to recover the penalty prescribed for carrying a greater number of passengers than allowed by her certificate was not sustained by the evidence. *The City of Lowell*, N.Y.1913, 204 F. 271, 122 C.C.A. 395.

Evidence of the officers of an excursion steamer that the steamer carried less than the number called for by her certificate, based on the number of tickets and coupons collected on her trip, is not overborne by the testimony of two persons on the wharf who counted the passengers as they hastily entered the boat over a narrow gangplank. *The Columbia*, N.Y.1892, 50 F. 441, 1 C.C.A. 526.

12. Judgment

The title to the vessel not being involved in the former suit, nor any question of lien, the new owners were not privies to the suit against their vendors, and they might show in the suit in rem that the number of passengers illegally carried was less than the jury found in the first suit. *The Boston*, C.C.Pa.1881, 8 F. 628.

A verdict and judgment against the owners of a vessel in a suit to charge them personally with the penalties incurred is not conclusive against their vendees in a subsequent suit in rem to enforce against the vessel the lien of the penalties. *Id.*

A judgment entered on a bond given and accepted as a substitute for a ves-

sel seized for a violation of Act July 7, 1838, c. 191, was incapable of being affected by any action of the President, who could not invalidate such judgment, or in any way impair its force and effect against the stipulators. 1864, 11 Op. Atty.Gen. 122.

13. Remission of penalty

A remission by the Secretary of the Treasury, under section 7 of this title of penalties incurred by a steam vessel for taking on board an unlawful number of passengers, where the remission is applied for before a suit in rem, brought for the penalties against the vessel, by an informer, is tried, is effectual to destroy all liability in the suit. *The Laura*, N.Y.1885, 5 S.Ct. 881, 114 U.S. 411, 29 L.Ed. 147. See, also, *Pollock v. Steam-Boat Laura*, D.C.N.Y.1880, 5 F. 133; *The Laura*, C.C.N.Y.1881, 8 F. 612.

14. Costs

In an action against a steamboat to recover the penalties, although the defense was established that the persons in excess of the allowed number were intruders against the will of the officers of the boat, and therefore that the penalties had not been incurred, yet there being apparently good ground for the suit, and the case being one proper for judicial investigation, and the answer not explicitly setting forth the real ground of defense, while the libel must be dismissed, it should be without costs to the respondent. *The Geneva*, D.C.Pa. 1886, 26 F. 647.

§ 463. Precautions against fire**Historical Note**

Codification. Section, R.S. § 4470; Act Mar. 3, 1905, c. 1437, § 7, 33 Stat. 1031, related to precautions against fire. Present provisions relating to fire precau-

tions are prescribed by the Commandant of the Coast Guard on the authority of section 463a of this title.

§ 463a. Same; additional precautions

Such provision to guard against and extinguish fire shall be made on every vessel which is subject to the provisions of subsections (4), (5), or (6) of section 170 of this title, or of any other section of title 52 of the Revised Statutes, or Acts amendatory or supplementary thereto, as shall be prescribed by the Commandant of the Coast Guard. Oct. 9, 1940, c. 777, § 2(a), 54 Stat. 1028; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

References in Text. For distribution of title 52, sections 4399-4500, of the Revised Statutes, referred to in the text, see note under section 170 of this title.

Effective Date. Effective date and separability of Act Oct. 9, 1940, see note under section 170 of this title.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the

transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

"Commandant of the Coast Guard" was substituted for "Board of Supervising Inspectors and approved by the Secretary of Commerce" on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

International Convention for Safety of Life at Sea, 1929. International Convention for Safety of Life at Sea, 1929, and enforcement thereof, see 54 Stat. Pt. 2, 1683, particularly Art. 24 and Regulation. XLIII of such Treaty, and Ex. Ord. No. 7548, Feb. 5, 1937, 2 F.R. 307. See, also, note under section 170 of this title.

Cross References

Appropriations, see section 170b of this title.

Notes of Decisions

Common law 1
Owner's liability 3
Vessels within section

1. Common law

The provisions of former section 463 of this title related only to the protection of the boat, and persons and freight thereon, and did not affect the common-law duty of vessel owners to supply their vessels with proper appliances to prevent injury to property on the shore. *Cheboygan Lumber Co. v. Delta Transp. Co.*, 1894, 58 N.W. 630, 100 Mich. 16.

2. Vessels within section

Steamboat inspectors may require ferriboats to be provided with the same precautions against fire, so far as ap-

plicable, as are expressly provided in reference to any other steam vessels carrying passengers and when the boat passes inspection on the basis of having a steam pump provided in accordance with section 464 of this title, the boat is bound to maintain it in the condition required by that section. *The Garden City*, D.C.N.Y. 1886, 26 F. 766.

3. Owner's liability

Fact that steam smothering system failed to put out fire in hold of vessel of foreign registry was not of itself sufficient to deprive vessel owner of advantage of section 182 of this title exonerating vessel owners from liability for fire damage unless caused by their design or neglect. *Fidelity-Phoenix Fire Ins. Co. of N. Y. v. Flota Mercante Del Estado, C.A. La.* 1953, 205 F.2d 886, certiorari denied. 74 S.Ct. 275, 346 U.S. 915, 98 L.Ed. 411.

§ 464. Fire pumps and hose; sprinkler systems

Every steamer permitted by her certificate of inspection to carry as many as fifty passengers, or upward, and every steamer carrying passengers, which also carries cotton, hay, or hemp, shall be pro-

vided with a good double-acting steam fire pump, or other equivalent apparatus for throwing water. Such pump or other apparatus for throwing water shall be kept at all times and at all seasons of the year in good order and ready for immediate use, having at least two pipes of suitable dimensions, one on each side of the vessel, to convey the water to the upper decks, to which pipes there shall be attached, by means of stopcocks or valves, both between decks and on the upper deck, good and suitable hose of sufficient strength to stand a pressure of not less than one hundred pounds to the square inch, long enough to reach to all parts of the vessel and properly provided with nozzles, and kept in good order and ready for immediate service. Each fire pump thus prescribed shall be supplied with water by means of a suitable pipe connected therewith, and passing through the side of the vessel so low as to be at all times under water when she is afloat. Every steamer shall also be provided with a pump which shall be of sufficient strength and suitably arranged to test the boilers thereof.

On and after October 1, 1937, every passenger vessel with berthed ¹ or stateroom accommodation for fifty or more passengers shall be equipped with an automatic sprinkler system, which shall be in addition to any other device or devices for fire protection, of a type prescribed by the Commandant of the Coast Guard. All enclosed portions of such vessels accessible to passengers or crew (except cargo holds, machinery spaces, and, when of fire-resisting construction, toilets, bathrooms, and spaces of similar construction) shall be protected by an automatic sprinkler system: *Provided*, That if after investigation the Commandant of the Coast Guard finds in the case of a particular vessel the application of this paragraph is unnecessary properly to protect life on such vessel, an exception may be made. The Commandant of the Coast Guard shall cause to be made suitable tests and inspections as will insure the proper working of such systems. In carrying out the provisions of this paragraph the Commandant of the Coast Guard is authorized and directed to prescribe the particular approved type, character, and manner of installation of systems to be fitted. The term "type" as used in this paragraph shall be considered to mean any system which will give a prescribed or required efficiency and shall not mean some peculiar shape or design and shall not be confined to some certain brand or make. R.S. § 4471; June 30, 1906, c. 3919, 34 Stat. 797; May 27, 1936, c. 463, § 1, 49 Stat. 1380; June 20, 1936, c. 618, 49 Stat. 1540; July 5, 1937, c. 438, 50 Stat. 477; Aug. 10, 1939, c. 644, 53 Stat. 1344; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

¹ So in original.

Historical Note

Derivation. Act Feb. 28, 1871, c. 100, § 3, 16 Stat. 440.

Codification. R.S. § 4471, prior to incorporation in the Code, was amended by Act June 30, 1906, which struck out, after the words "is afloat," and before the words "every steamer," the words of the section as originally enacted, "and no fire pump thus provided for shall be placed below the lower deck of the vessel."

1939 Amendment. Act Aug. 10, 1939, amended section by omitting provisions requiring two hand pumps on passenger steamers exceeding two hundred tons and dispensing with one of such pumps on steamers not exceeding two hundred tons.

1937 Amendment. Act July 5, 1937, amended section by substituting "October 1, 1937" for "July 1, 1937".

1936 Amendment. Act June 20, 1936, amended section by adding paragraph relating to sprinkler systems.

Change of Name. The Bureau of Navigation and Steamboat Inspection was changed to the Bureau of Marine Inspection and Navigation by Act May 27, 1936.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize

their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

References to the Board of Supervising Inspectors and the Bureau of Marine Inspection and Navigation were changed to Commandant of the Coast Guard and a provision for approval by the Secretary of Commerce was omitted on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

International Convention for Safety of Life at Sea, 1929. International Convention for Safety of Life at Sea, 1929, and enforcement thereof, see 54 Stat. Pt. 2, 1683, particularly Art. 24 and Regulation XLIII of such Treaty, and Ex.Ord. No. 7548, Feb. 5, 1937, 2 F.R. 307. See also, note under section 170 of this title.

Cross References

Section as applicable to foreign private steam vessels, see section 362 of this title.

Notes of Decisions

Duty of captain 4
Maintenance of apparatus 5
Occasionally carrying passengers 3
Passengers 2
Vessels within section 1

1. Vessels within section

The provisions of this section are not, *ex vi terminorum*, applicable to ferryboats, but they may be made legally applicable to ferryboats under the powers conferred upon inspectors by sections 404 and 463a of this title. *The Garden City, D.C.N.Y.1896, 26 F. 766.*

2. Passengers

Negro slaves, shipped by their owner, were passengers under this section. *U. S. v. The Thomas Swan, D.C.S.C.1856, Fed.Cas.No.16,480.*

3. Occasionally carrying passengers

The provisions of this section apply as well to such vessels as occasionally undertake to carry passengers as to those regularly employed in the business of transporting passengers. *U. S. v. The Thomas Swan, D.C.S.C.1856, 19 F. Rep. 201, 28 Fed.Cas.No.16,480.*

4. Duty of captain

It is the statutory duty of the captain to maintain an efficient fire drill, to see that the proper apparatus for extinguishing fire is provided and maintained in proper order, and to exercise ordinary care to see that the life-preservers are in fit condition for use. *Van Schaick v. U. S.*, N.Y.1908, 159 F. 847, 87 C.C.A. 27, 14 Ann.Cas. 458.

5. Maintenance of apparatus

Where a ferryboat passed inspection as having a steam pump, and fire broke

out in the "center house," which might have been checked at once if the hose had been stretched out with the nozzle on, it was negligence, for which the ferryboat was liable, to leave the hose coiled and kinked, and without a nozzle attached. *The Garden City*, D.C.N.Y.1886, 26 F. 786.

When the boat passes inspection on the basis of having a steam pump provided, the boat is bound to maintain it in the condition required by this section. *Id.*

§ 465. Transferred**Historical Note**

Codification. Section has been transferred to section 170 of this title.

§ 466. Repealed. Oct. 9, 1940, c. 777, § 7, 54 Stat. 1028**Historical Note**

Section, R.S. § 4473, imposed a penalty for unlawfully carrying cotton or hemp on a passenger steamer.

§ 466a. Rules as to accommodations for export animals

The Secretary of Agriculture is authorized to examine all vessels which are to carry export cattle, horses, mules, asses, sheep, goats, or swine from the ports of the United States to foreign countries, and to prescribe by rules and regulations or orders the accommodations which said vessels shall provide for export cattle, horses, mules, asses, sheep, goats, or swine as to space, ventilation, fittings, food and water supply, and such other requirements as he may decide to be necessary for the safe and proper transportation and humane treatment of such animals. Mar. 3, 1891, c. 521, § 1, 26 Stat. 833; May 28, 1928, c. 824, 45 Stat. 789.

Historical Note

1928 Amendment. Act May 28, 1928, amended section by inserting references to horses, mules, asses, sheep, goats, or swine.

§ 466b. Violation of rules; penalty

Whenever the owner, owners, or master of any vessel carrying export cattle, horses, mules, asses, sheep, goats, or swine shall willfully violate or cause or permit to be violated any rule, regulation, or order made pursuant to section 466a of this title the vessel in respect of which such violation shall occur may be prohibited from again carrying cattle, horses, mules, asses, sheep, goats, or swine from any port of the United States for such length of time, not exceeding one

year, as the Secretary of Agriculture may direct, and such vessel shall be refused clearance from any port of the United States accordingly. Mar. 3, 1891, c. 521, § 2, 26 Stat. 833; May 28, 1928, c. 824, 45 Stat. 790.

Historical Note

1928 Amendment. Act May 28, 1928, amended section by inserting references to horses, mules, asses, sheep, goats, or swine.

§ 467. Discharge of petroleum at terminal ports

When crude petroleum of a flash point not less than one hundred and fifty degrees Fahrenheit is carried in the double-bottom fuel tanks of steamers using the same for fuel, the crude petroleum carried in such tanks in excess of the necessities of the voyage may be discharged at terminal ports when no passengers are on board the ship. Crude petroleum carried and discharged under these conditions will not be considered stores or cargo within the contemplation of section 170 of this title, and will be considered as only for use as fuel within the contemplation of section 391a(1) of this title. R.S. § 4474; Oct. 18, 1888, c. 1197, 25 Stat. 564; Feb. 14, 1903, c. 552, § 10, 32 Stat. 829; Mar. 4, 1913, c. 141, § 1, 37 Stat. 736; July 17, 1914, c. 146, 38 Stat. 511; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097; Sept. 23, 1950, c. 1002, 64 Stat. 980.

Historical Note

Derivation. Act Feb. 23, 1871, c. 100, § 4, 16 Stat. 442.

Codification. R.S. § 4474, prior to incorporation in the Code, was amended by Act Oct. 18, 1888, which added a proviso authorizing the Secretary of Commerce to permit use of petroleum as fuel on steamers not carrying passengers without a certificate of the supervising inspector and a provision penalizing violations.

It was again amended by Act July 17, 1914, which added proviso authorizing discharge of excess petroleum when no passengers are on board and provision that such discharged petroleum will not be considered stores or cargo.

Upon incorporation into the Code, the words "Secretary of Commerce" were substituted for "Secretary of the Treasury" and "Department of Commerce" for "Treasury Department" to conform to Act Feb. 14, 1903, which transferred the duties, etc., of the Secretary of the Treasury, relating to merchant vessels, to the Secretary of Commerce and Labor; and Act Mar. 4, 1918, which provided

that the Secretary of Commerce and Labor should thereafter be called the Secretary of Commerce.

1950 Amendment. Act Sept. 23, 1950 omitted provisions of this section requiring special licenses from the Coast Guard for use of petroleum for motive power, with imposition of a penalty for violation of any of the conditions imposed, and added the reference to section 391a(1) of this title.

Transfer of Functions. In former provisions of this section, references to the Secretary of Commerce were changed to Commandant of the Coast Guard, and "Coast Guard" was substituted for "supervising inspector of steamboats for the district wherein such vessel is registered", "Department of Commerce", and "supervising inspector of the district where the vessel is to be used", on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Legislative History: For legislative history and purpose of Act Sept. 23, 1950, see 1950 U.S. Code Cong. Service, p. 3858.

§§ 468, 469 Repealed. Oct. 9, 1940, c. 777, § 7, 54 Stat. 1028.

Historical Note

Sections, R.S. §§ 4475, 4476, related to the mode of packing and unlawful shipment of dangerous articles, and are now covered by section 170 of this title.

§ 470. Watchmen on passenger steamers

Every steamer carrying passengers during the nighttime shall keep a suitable number of watchmen in the cabins, and on each deck, to guard against fire or other dangers, and to give alarm in case of accident or disaster. R.S. § 4477.

Historical Note

Derivation. Act Feb. 23, 1871, c. 100, § 6, 16 Stat. 442.

Notes of Decisions

Indictment 2

Privy 1

1. Privy

In libel on indemnity marine policy, evidence established actual fault or privy of corporate shipowner, comprising failure to provide proper watch, hold fire and boat drills, or prepare men and equipment for emergency of fire and abandonment of vessel, precluding recovery with respect to shipowner's liability for damages resulting from fire at sea. *New York & Cuba Mail S. S. Co. v. Continental Ins. Co. of City of New York*, C.C.A.N.Y.1941, 117 F.2d 404, certiorari denied 61 S.Ct. 1103, 313 U.S. 580, 85 L. Ed. 1537.

While neglect of a shipowner to provide watchman, as required by this section, would render such owner liable under section 491 of this title for injuries to passengers or their effects which happen through such neglect, the neglect of a watchman provided to perform his duty is without privy of the owner. *Petition of Canadian Pac. Ry. Co., D.C. Wash.1921, 278 F. 180.*

2. Indictment

An indictment is sufficient if it alleges the captain's neglect to keep a sufficient number of watchmen on deck and the failure, in consequence thereof, to rescue a passenger who had fallen overboard. *U. S. v. Beacham, C.C.Md.1886, 29 F. 284.*

§ 471. Punishment for failure to keep watchmen

For any neglect to keep the watchmen required by section 470 of this title, the license of the officer in charge of the vessel for the time being shall be revoked; and every owner of such vessel who neglects or refuses to furnish the number of men necessary to keep watch as required, shall be fined \$1,000. R.S. § 4478.

Historical Note

Derivation. Act Feb. 23, 1871, c. 100, § 6, 16 Stat. 442.

Notes of Decisions

1. Generally

Neglect on the part of the watchman or lookout is not neglect to keep a watchman. *Petition of Canadian Pac. Ry. Co., D.C.Wash.1921, 278 F. 180.*

§ 472. Fire extinguishers

The Commandant of the Coast Guard may require steamers carrying either passengers or freight to be provided with such number and kind of good and efficient portable fire extinguishers as, in the judgment of the Commandant, may be necessary to protect them from fire when such steamers are moored or lying at a wharf without steam to work the pumps. R.S. § 4479; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Derivation. Act Feb. 28, 1871, c. 100, § 6, 16 Stat. 442.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5. Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a

service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

References to the Board of Supervising Inspectors were changed to Commandant of the Coast Guard on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Cross References

Section as applicable to foreign private steam vessels, see section 362 of this title.

§ 473. Steering, navigating, and signaling apparatus

Every steamer carrying passengers shall be provided with such tiller ropes, tiller rods, or chains for the purpose of steering and navigating the vessel, and such bell pulls for signaling the engineer from the pilot house, and such tubes or other arrangement to repeat back the signal to the pilot house, as may be prescribed by the Commandant of the Coast Guard. R.S. § 4480; Mar. 3, 1905, c. 1456, § 2, 33 Stat. 1028; Mar. 4, 1913, c. 141, § 1, 37 Stat. 736; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Derivation. Act Feb. 28, 1871, c. 100, § 10, 16 Stat. 443.

Codification. R.S. § 4480, prior to amendment by Act Mar. 3, 1905, read as follows: "Every steamer carrying passengers shall be provided with wire tiller-ropes, or iron rods or chains, for the purpose of steering and navigating the vessel, and shall employ wire bell-pulls for signaling the engineer from the pilot-house, together with tubes of proper

size so arranged as to return the sound of the engine-bells to the pilot-house, or other arrangement to repeat back the signal. But on any such vessel navigated by the mariners' compass, so much of such wire rope or chain may be dispensed with and disused as shall influence or disturb the working of the compass."

Upon incorporation into the Code, the words "Secretary of Commerce" were

substituted for "Secretary of Commerce and Labor" to conform to Act Mar. 4, 1913. See note under section 454 of this title.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard,

referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

"Commandant of the Coast Guard" was substituted for "Board of Supervising Inspectors, with the approval of the Secretary of Commerce" on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

§ 474. Boats for river steamers

Every steam vessel navigating rivers only, except ferry boats, freight boats, canal boats, and towing boats, of less than fifty tons, shall have at least one good substantial boat with lines attached, and properly supplied with oars, and kept in good condition at all times, and ready for immediate use; and in addition thereto, every such vessel carrying passengers shall have one or more metallic lifeboats, fireproof, and in all respects good and substantial boats, of such dimensions and arrangements as the Commandant of the Coast Guard by regulations shall prescribe, which boats shall be carried in the most convenient manner to be brought into immediate use in case of accident. But where the character of the navigation is such that, in the opinion of the Coast Guard, the metallic lifeboats can be dispensed with, it may exempt any such vessel from carrying the same; or may require a substitute therefor, at its discretion. R.S. § 4481; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Derivation. Act Feb. 28, 1871, c. 100, § 7, 16 Stat. 442.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Depart-

ment, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

References to the Board of Supervising Inspectors and the supervising inspector were changed to Commandant of the Coast Guard and the Coast Guard, respectively, on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

§ 475. Life preservers for river steamers

Every steam vessel navigating rivers only shall also be provided with an approved life preserver for each and every person allowed to be carried on said vessel by the certificate of inspection, including each member of the crew, which life preservers shall be kept in convenient and accessible places on such vessel in readiness for immediate use in case of accident. In lieu of an approved life preserver for each such person, the head of the Department in which the Coast Guard is operating may permit the use of such proportion of approved floats to the total number of persons carried or authorized to be carried as he may determine. R.S. § 4482; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097; June 4, 1956, c. 349, 70 Stat. 223.

Historical Note

Derivation. Act Feb. 28, 1871, c. 100, § 8, 16 Stat. 443.

1956 Amendment. Act June 4, 1956, amended section by substituting the words "navigating rivers only" for "carrying passengers" and, "an approved" for "a good" life preserver, and required such life preservers for every person allowed aboard, in place of previous provision which permitted choice of carrying either a life preserver or float for persons other than cabin passengers, and authorized use of floats in lieu of life preservers when permitted by the head of the Department in which the Coast Guard is operating.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 28, §§ 1, 2, eff. July 31, 1950, 15

F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

Phrase "inspection certificate" was substituted for "inspector's certificate" on authority of 1946 Reorg. Plan No. 3, which abolished the office of inspector and transferred inspection functions to the Coast Guard. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Legislative History: For legislative history and purpose of Act June 4, 1956, see 1956 U.S. Code Cong. and Adm. News, p. 2639.

Cross References

Section as applicable to foreign private steam vessels, see section 362 of this title.

Notes of Decisions

Duty of captain 1
Priority of liens 2

Van Schaick v. U. S., N.Y. 1908, 159 F. 847, 87 C.C.A. 27, 14 Ann. Cas. 456.

2. Priority of Liens

1. Duty of captain

It is the duty of the captain to exercise ordinary care to see that the life-preservers are in fit condition for use.

Liens of seamen for wages due them are entitled to priority over the claims of the government for a penalty for failing to carry the number of life preservers or floats required by law. *The Jennie Hayes*, D.C. Iowa 1889, 37 F. 313.

§ 476. Fire buckets and axes for river steamers

Every steam vessel described in section 474 of this title carrying passengers shall keep such fire buckets, axes, and water barrels as shall be prescribed by the regulations established by the Commandant of the Coast Guard. The buckets and barrels shall be kept in convenient places and filled with water, to be in readiness in case of fire, and the axes shall be kept in good order and ready for immediate use. Tanks of suitable dimensions and arrangement, or buckets in sufficient number, may be substituted for barrels. R.S. § 4483; Mar. 3, 1905, c. 1456, § 3, 33 Stat. 1028; Mar. 4, 1913, c. 141, § 1, 37 Stat. 736; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Derivation. Act Feb. 28, 1871, c. 100, § 8, 16 Stat. 443.

Codification. R.S. § 4483, was amended by Act Mar. 3, 1905, which affected only the first sentence which prior thereto read as follows: "Every such steam-vessel carrying passengers, of two hundred tons burden or less, shall also keep at least eighteen fire-buckets and two water-barrels, and shall have not less than four axes; and every such steamer of over two hundred tons, and not less than five hundred tons burden, shall carry not less than twenty-four buckets, four water-barrels, and six axes; and every such steamer of over five hundred tons shall carry not less than thirty-five buckets, six water-barrels, and eight axes."

Upon incorporation into the Code, the words "Secretary of Commerce" were substituted for "Secretary of Commerce and Labor," to conform to Act Mar. 4, 1913. See note under section 454 of this title.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department.

were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4035, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

"Commandant of the Coast Guard" was substituted for "Board of Supervising Inspectors, with the approval of the Secretary of Commerce" on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

§ 477. Stairways and gangways on river steamers

Every steam vessel described in section 474 of this title carrying passengers on the main deck shall be provided with permanent stairways and other sufficient means, convenient to the passengers, for their escape to the upper deck, in case of the vessel sinking or of other accident endangering life; and in the stowage of freight upon such deck, where passengers are carried, gangways or passages, sufficiently large to allow persons to pass freely through them, shall be left open both fore and aft of the vessel, and also to and along the guards on each side. R.S. § 4484.

Historical Note

Derivation. Act Feb. 28, 1871, c. 100, § 9, 16 Stat. 443.

§ 478. Accommodation of deck passengers

The captain or mate of every steam vessel described in section 474 of this title carrying passengers upon the main deck shall assign to all deck passengers, when taking passage, the space on deck they may occupy during the voyage, and such space shall not thereafter be occupied by freight, nor overcrowded by other persons, nor shall freight be stowed about the boilers or machinery, in such a manner as to obstruct or prevent the engineer from readily attending to his duties. R.S. § 4485.

Historical Note

Derivation. Act Feb. 28, 1871, c. 100, § 9, 16 Stat. 443.

§ 479. Penalty for not providing proper accommodations for passengers

For every violation of the provisions of sections 477 and 478 of this title the owners of the vessel shall be punished by a fine of \$300. R.S. § 4486.

Historical Note

Derivation. Act Feb. 28, 1871, c. 100, § 9, 16 Stat. 443.

§ 480. River steamers to be anchored when navigation is unsafe

On any steamers navigating rivers only, when, from darkness, fog, or other cause, the pilot or watch shall be of opinion that the navigation is unsafe, or, from accident to or derangement of the machinery of the boat, the chief engineer shall be of the opinion that the further navigation of the vessel is unsafe, the vessel shall be brought to anchor, or moored as soon as it can prudently be done: *Provided*, That if the person in command shall, after being so admonished by either of such officers, elect to pursue such voyage, he may do the same; but in such case both he and the owners of such steamer shall be answerable for all damages which shall arise to the person of any passenger, or his baggage, from such causes in so pursuing the voyage, and no degree of care or diligence shall in such case be held to justify or excuse the person in command or the owners. R.S. § 4487.

Historical Note

Derivation. Act Feb. 28, 1871, c. 100, § 42, 16 Stat. 453.

Notes of Decisions

Contributory negligence 2

Evidence 3

Imminent danger 1

1. Imminent danger

The admonition and election above referred to is not one arising out of a sudden emergency in a case where the danger is imminent. *The Longfellow*, Ohio 1900, 104 F. 360, 45 C.C.A. 379.

2. Contributory negligence

Where those in control of a vessel violate this section and the vessel is in-

jured in consequence, the defense of contributory negligence may be set up by persons against whom an action is brought to recover damages for such injuries. *Watson v. Mississippi River Power Co.*, 1920, 176 N.W. 624, 189 Iowa 529.

3. Evidence

Evidence was insufficient to establish a case under this section. *The Longfellow*, Ohio 1900, 104 F. 360, 45 C.C.A. 379.

§ 481. Regulations as to life-saving appliances on ocean, lake, and sound steamers and foreign vessels

Every steamer navigating the ocean, or any lake, bay, or sound of the United States, shall be provided with such numbers of lifeboats, floats, rafts, life-preservers, line-carrying projectiles, and the means of propelling them, and drags, as will best secure the safety of all persons on board such vessel in case of disaster; and every seagoing vessel carrying passengers, and every such vessel navigating any of the northern or northwestern lakes, shall have the lifeboats required by law, provided with suitable boat-disengaging apparatus, so arranged as to allow such boats to be safely launched. And the Commandant of the Coast Guard shall fix and determine, by rules and regulations, the character and arrangement of boat-disengaging apparatus and the character of lifeboats, floats, rafts, life-preservers, line-carrying projectiles, and the means of propelling them, and drags that shall be used on such vessels, and also the character and capacity of pumps or other appliances for freeing the steamer from water in case of heavy leakage, the capacity of such pumps or appliances being suited to the navigation in which the steamer is employed. Every vessel subject to the provisions of title 52 of the Revised Statutes shall, while in operation, carry one life preserver for each and every person allowed to be carried on said vessel by the certificate of inspection, including each member of the crew: *Provided, however*, That upon such vessels and under such conditions as are specified in section 475 of this title floats may be substituted for life preservers. Any person who willfully and knowingly manufactures or sells, or offers for sale, or has in his possession with intent to sell, life preservers containing metal or other nonbuoyant material, for the purpose of increasing the weight thereof, or more metal or other such material than is reasonably necessary for the construction thereof, or who shall so manufacture, sell,

offer for sale, or possess with intent to sell any other articles commonly used for preservation of life or the prevention of fire on board vessels subject to the provisions of title 52 of the Revised Statutes, which articles shall be so defective as to be inefficient to accomplish the purposes for which they are respectively intended and designed, shall upon conviction, be fined not more than \$2,000, and may, in addition thereto, in the discretion of the court, be imprisoned not exceeding five years. 41

The powers bestowed by this section upon the Commandant of the Coast Guard in respect of lifeboats, floats, rafts, life preservers, and other life-saving appliances and equipment, and the further requirements herein as to davits, embarkation of passengers in lifeboats and rafts, and the manning of lifeboats and rafts, and the musters and drills of the crews, on steamers navigating the ocean or any lake, bay, or sound of the United States, shall be subject to the provisions, limitations, and minimum requirements of the regulations herein set forth, and all such vessels shall be required to comply in all respects therewith: *Provided*, That foreign vessels leaving ports of the United States shall comply with the rules herein prescribed as to life-saving appliances, their equipment, and the manning of same.

REGULATIONS

LIFE-SAVING APPLIANCES

STANDARD TYPES OF BOATS

The standard types of boats classified as follows:

Class	Section	Type
I (Entirely rigid sides)	A. Open. Internal buoyancy only. B. Open. Internal and external buoyancy. C. Pontoon. Well deck, fixed water-tight bulwarks.	
II (Partially collapsible sides)	A. Open. Upper part of sides collapsible. B. Pontoon. Well deck, collapsible water-tight bulwarks. C. Pontoon. Flush deck; collapsible water-tight bulwarks.	

STRENGTH OF BOATS

Each boat must be of sufficient strength to enable it to be safely lowered into the water when loaded with its full complement of persons and equipment.

ALTERNATIVE TYPES OF BOATS AND RAFTS

Any type of boat may be accepted as equivalent to a boat of one of the prescribed classes and any type of raft as equivalent to an approved pontoon raft, if the Commandant of the Coast Guard is satisfied by suitable trials that it is as effective as the standard types of the class in question, or as the approved type of pontoon raft, as the case may be.

Motor boats may be accepted if they comply with the requirements laid down for boats of the first class, but only to a limited number, which number shall be determined by the Commandant of the Coast Guard.

No boat may be approved the buoyancy of which depends upon the previous adjustment of one of the principal parts of the hull or which has not a cubic capacity of at least one hundred and twenty-five cubic feet.

BOATS OF THE FIRST CLASS

The standard types of boats of the first class must satisfy the following conditions:

1A.—*Open boats with internal buoyancy only*

The buoyancy of a wooden boat of this type shall be provided by water-tight air cases, the total volume of which shall be at least equal to one-tenth of the cubic capacity of the boat.

The buoyancy of a metal boat of this type shall not be less than that required above for a wooden boat of the same cubic capacity, the volume of water-tight air cases being increased accordingly.

1B.—*Open boats with internal and external buoyancy*

The internal buoyancy of a wooden boat of this type shall be provided by water-tight air cases, the total volume of which is at least equal to $7\frac{1}{2}$ per centum of the cubic capacity of the boat.

The external buoyancy may be of cork or of any other equally efficient material, but such buoyancy shall not be secured by the use of rushes, cork shavings, loose granulated cork, or any other loose granulated substance, or by any means dependent upon inflation by air.

If the buoyancy is of cork, its volume, for a wooden boat, shall not be less than thirty-three thousandths of the cubic capacity of the boat; if of any material other than cork, its volume and distribution shall be such that the buoyancy and stability of the boat are not less than that of a similar boat provided with buoyancy of cork.

The buoyancy of a metal boat shall be not less than that required above for a wooden boat of the same cubic capacity, the volume of the air cases and external buoyancy being increased accordingly.

1C.—*Pontoon boats, in which persons can not be accommodated below the deck, having a well deck and fixed water-tight bulwarks*

The area of the well deck of a boat of this type shall be at least 30 per centum of the total deck area. The height of the well deck above the water line at all points shall be at least equal to $\frac{1}{2}$ per centum of the length of the boat, this height being increased to $1\frac{1}{2}$ per centum of the length of the boat at the ends of the well.

The freeboard of a boat of this type shall be such as to provide for a reserve buoyancy of at least 35 per centum.

BOATS OF THE SECOND CLASS

The standard types of boats of the second class must satisfy the following conditions:

2A.—*Open boats having the upper part of the sides collapsible*

A boat of this type shall be fitted both with water-tight air cases and with external buoyancy, the volume of which, for each person which the boat is able to accommodate, shall be at least equal to the following amounts: Air cases, one and five-tenths cubic feet; external buoyancy (if of cork), two-tenths cubic foot.

The minimum freeboard of boats of this type is fixed in relation to their length; it is measured vertically to the top of the solid hull at the side amidships, from the water level when the boat is loaded.

The freeboard in fresh water shall not be less than the following amounts:

Length of the boat	Minimum freeboard
<i>Feet</i>	<i>Inches</i>
26	8
28	9
30	10

The freeboard of boats of intermediate lengths is to be found by interpolation.

2B.—*Pontoon boats having a well deck and collapsible bulwarks*

All the conditions laid down for boats of type 1C are to be applied to boats of this type, which differ from those of type 1C only in regard to the bulwarks.

2C.—*Pontoon boats, in which the persons can not be accommodated below deck, having a flush deck and collapsible bulwarks*

The minimum freeboard of boats of this type is independent of their lengths and depends only upon their depth. The depth of the boat is to be measured vertically from the underside of the garboard strake to the top of the deck on the side amidships, and the freeboard is to be measured from the top of the deck at the side amidships to the water level when the boat is loaded.

The freeboard in fresh water shall not be less than the following amounts, which are applicable without correction to boats having a mean sheer equal to 3 per centum of their length:

Depth of boat	Minimum freeboard
<i>Inches</i>	<i>Inches</i>
12	2¾
18	3¾
20	5⅛
30	6½

For intermediate depths the freeboard is obtained by interpolation.

If the sheer is less than the standard sheer defined above, the minimum freeboard is obtained by adding to the figures in the table one-seventh of the difference between the standard sheer and the actual mean sheer measured at the stem and sternpost. No deduction is to be made from the freeboard on account of the sheer being greater than the standard sheer or on account of the camber of the deck.

MOTOR BOATS

When motor boats are accepted, the volume of internal buoyancy and, when fitted, the external buoyancy, must be fixed, having regard to the difference between the weight of the motor and its accessories and the weight of the additional persons which the boat could accommodate if the motor and its accessories were removed.

ARRANGEMENTS FOR CLEARING PONTOON LIFEBOATS OF WATER

All pontoon lifeboats shall be fitted with efficient means for quickly clearing the deck of water. The orifices for this purpose shall be such that the water can not enter the boat through them when they are intermittingly submerged. The number and size of the orifices shall be determined for each type of boat by a special test.

For the purpose of this test the pontoon boat shall be loaded with a weight of iron or bags of sand, equal to that of its complement of persons and equipment.

In the case of a boat twenty-eight feet in length two tons of water shall be cleared from the boat in a time not exceeding the following: type 1C, sixty seconds; type 2B, sixty seconds; type 2C, twenty seconds.

In the case of a boat having a length greater or less than twenty-eight feet the weight of water to be cleared in the same time shall be, for each type, directly proportional to the length of the boat.

CONSTRUCTION OF BOATS

Open lifeboats of the first class (types 1A and 1B) must have a mean sheer at least equal to 4 per centum of their length.

The air cases of open boats of the first class shall be placed along the sides of the boat; they may also be placed at the ends of the boat, but not in the bottom of the boat.

Pontoon lifeboats may be built of wood or metal. If constructed of wood, they shall have the bottom and deck made of two thicknesses with textile material between; if of metal, they shall be divided into water-tight compartments with means of access to each compartment.

All boats shall be fitted for the use of a steering oar.

PONTOON RAFTS

No type of pontoon raft may be approved unless it satisfies the following conditions:

First. It should be reversible and fitted with bulwarks of wood, canvas, or other suitable material on both sides. These bulwarks may be collapsible.

Second. It should be of such size, strength, and weight that it can be handled without mechanical appliances, and, if necessary, be thrown from the vessel's deck.

Third. It should have not less than three cubic feet of air cases or equivalent buoyancy for each person whom it can accommodate.

Fourth. It should have a deck area of not less than four square feet for each person whom it can accommodate and the platform should not be less than six inches above the water level when the raft is loaded.

Fifth. The air cases or equivalent buoyancy should be placed as near as possible to the sides of the raft.

CAPACITY OF BOATS AND PONTOON RAFTS

First. The number of persons which a boat of one of the standard types or a pontoon raft can accommodate is equal to the greatest whole number obtained by dividing the capacity in cubic feet, or the surface in square feet, of the boat or of the raft by the standard unit

of capacity, or unit of surface (according to circumstances), defined below for each type.

Second. The cubic capacity in feet of a boat in which the number of persons is determined by the surface shall be assumed to be ten times the number of persons which it is authorized to carry.

Third. The standard units of capacity and surface are as follows:

Units of capacity, open boats, type 1A, ten cubic feet; open boats, type 1B, nine cubic feet.

Unit of surface, open boats, type 2A, three and one-half square feet; pontoon boats, type 2C, three and one-half square feet; pontoon boats, type 1C, three and one-fourth square feet; pontoon boats, type 2B, three and one-fourth square feet.

Fourth. The Commandant of the Coast Guard may accept, in place of three and one-fourth, a smaller divisor, if he is satisfied after trial that the number of persons for whom there is seating accommodation in the pontoon boat in question is greater than the number obtained by applying the above divisor, provided always that the divisor adopted in place of three and one-fourth may never be less than three.

CAPACITY LIMITS

Pontoon boats and pontoon rafts shall never be marked with a number of persons greater than that obtained in the manner specified in this section.

This number shall be reduced—

First. When it is greater than the number of persons for which there is proper seating accommodation, the latter number being determined in such a way that the persons when seated do not interfere in any way with the use of the oars.

Second. When in the case of boats other than those of the first two sections of the first class, the freeboard, when the boat is fully loaded, is less than the freeboard laid down for each type respectively. In such circumstances the number shall be reduced until the freeboard, when the boat is fully loaded, is at least equal to the standard freeboard laid down above.

In boats of types 1C and 2B the raised part of the deck at the sides may be regarded as affording seating accommodation.

EQUIVALENTS FOR AND WEIGHT OF THE PERSONS

In test for determining the number of persons which a boat or pontoon raft can accommodate, each person shall be assumed to be an adult person wearing a life jacket.

In verifications of freeboard the pontoon boats shall be loaded with a weight of at least one hundred and sixty-five pounds for each adult person that the pontoon boat is authorized to carry.

In all cases two children under twelve years of age shall be reckoned as one person.

CUBIC CAPACITY OF OPEN BOATS OF THE FIRST CLASS

First. The cubic capacity of an open boat of type 1A or 1B shall be determined by Stirling's (Simpson's) rule or by any other method, approved by the Commandant of the Coast Guard, giving the same degree of accuracy. The capacity of a square-sterned boat shall be calculated as if the boat had a pointed stern.

Second. For example, the capacity in cubic feet of a boat, calculated by the aid of Stirling's rule, may be considered as given by the following formula:

$$\text{Capacity} = \frac{1}{12}(4A + 2B + 4C)$$

1 being the length of the boat in meters (or feet) from the inside of the planking or plating at the stem to the corresponding point at the stern post; in the case of a boat with a square stern, the length is measured to the inside of the transom.

A, B, C denote, respectively, the areas of the cross sections at the quarter length forward, amidships, and the quarter length aft, which correspond to the three points obtained by dividing 1 into four equal parts. (The areas corresponding to the two ends of the boat are considered negligible.)

The areas A, B, C shall be deemed to be given in square feet by the successive application of the following formula to each of the three cross sections:

$$\text{Area} = \frac{h}{12}(a + 4b + 2c + 4d + e)$$

h being the depth measured in meters (or in feet) inside the planking or plating from the keel to the level of the gunwale, or, in certain cases, to a lower level as determined hereafter.

a, b, c, d, e denote the horizontal breadths of the boat measured in feet at the upper and lower points of the depth and at the three points obtained by dividing h into four equal parts (a and e being the breadths at the extreme points, and c at the middle point, of h).

Third. If the sheer of the gunwale, measured at the two points situated at a quarter of the length of the boat from the ends, exceeds 1 per centum of the length of the boat, the depth employed in calculating the area of the cross sections A or C shall be deemed to be the depth amidships plus 1 per centum of the length of the boat.

Fourth. If the depth of the boat amidships exceeds 45 per centum of the breadth, the depth employed in calculating the area of the midship cross section B shall be deemed to be equal to 45 per centum of the breadth; and the depth employed in calculating the areas of the

quarter-length sections A and C is obtained by increasing this last figure by an amount equal to 1 per centum of the length of the boat, provided that in no case shall the depths employed in the calculation exceed the actual depths at these points.

Fifth. If the depth of the boat is greater than four feet, the number of persons given by the application of this rule shall be reduced in proportion to the ratio of four feet to the actual depth, until the boat has been satisfactorily tested afloat with that number of persons on board all wearing life jackets.

Sixth. The Commandant of the Coast Guard shall impose, by suitable formulæ, a limit for the number of persons allowed in boats with very fine ends and in boats very full in form.

Seventh. The Commandant of the Coast Guard may by regulation assign to a boat a capacity equal to the product of the length, the breadth, and the depth multiplied by six-tenths if it is evident that this formula does not give a greater capacity than that obtained by the above method. The dimensions shall then be measured in the following manner:

Length. From the intersection of the outside of the planking with the stem to the corresponding point at the sternpost or, in the case of a square-sterned boat, to the after side of the transom.

Breadth. From the outside of the planking at the point where the breadth of the boat is greatest.

Depth. Amidships inside the planking from the keel to the level of the gunwale, but the depth used in calculating the cubic capacity may not in any case exceed 45 per centum of the breadth.

In all cases the vessel owner has the right to require that the cubic capacity of the boat shall be determined by exact measurement.

Eighth. The cubic capacity of a motor boat is obtained from the gross capacity by deducting a volume equal to that occupied by the motor and its accessories.

DECK AREA OF PONTOON BOATS AND OPEN BOATS OF THE SECOND CLASS

First. The area of the deck of a pontoon boat of type 1C, 2B, or 2C shall be determined by the method indicated below or by any other method giving the same degree of accuracy. The same rule is to be applied in determining the area within the fixed bulwarks of a boat of type 2A.

Second. For example, the surface in square feet of a boat may be deemed to be given by the following formula:

$$\text{Area} = \frac{1}{12}(2a + 1.5b + 4c + 1.5d + 2e)$$

1 being the length in feet from the intersection of the outside of the planking with the stem to the corresponding point at the sternpost.

a, b, c, d, e denote the horizontal breadths in feet outside the planking at the points obtained by dividing 1 into four equal parts and subdividing the foremost and aftermost parts into two equal parts (a and e being the breadths at the extreme subdivisions, c at the middle point of the length, and b and d at the intermediate points).

MARKING OF BOATS AND PONTOON RAFTS

The dimensions of the boat and the number of persons which it is authorized to carry shall be marked on it in clear, permanent characters, according to regulations by the Commandant of the Coast Guard. These marks shall be specifically approved by the officers appointed to inspect the ship.

Pontoon rafts shall be marked with the number of persons in the same manner.

EQUIPMENT OF BOATS AND PONTOON RAFTS

First. The normal equipment of every boat shall consist of—

(a) A single banked complement of oars and two spare oars; one set and a half of thole pins or crutches; a boat hook.

(b) Two plugs for each plug hole (plugs are not required when proper automatic valves are fitted); a bailer and a galvanized iron bucket.

(c) A tiller or yoke and yoke lines.

(d) Two hatchets.

(e) A lamp filled with oil and trimmed.

(f) A mast or masts with one good sail at least, and proper gear for each. (This does not apply to motor lifeboats or lifeboats on the Great Lakes or other inland waters.)

(g) A suitable compass.

Pontoon lifeboats will have no plug hole, but shall be provided with at least two bilge pumps.

In the case of a steamer which carries passengers in the North Atlantic, all the boats need not be equipped with masts, sails, and compasses, if the ship is provided with a radiotelegraph installation.

Second. The normal equipment of every approved pontoon raft shall consist of—

(a) Four oars.

(b) Five rowlocks.

(c) A self-igniting life buoy light.

Third. In addition, every boat and every pontoon raft shall be equipped with—

(a) A life line becketed around the outside.

(b) A sea anchor.

(c) A painter.

(d) A vessel containing one gallon of vegetable or animal oil. The vessel shall be so constructed that the oil can be easily distributed on the water and so arranged that it can be attached to the sea anchor.

(e) A water-tight receptacle containing two pounds avoirdupois of provisions for each person, except on vessels navigating fresh water.

(f) A water-tight receptacle containing one quart for each person, except on vessels navigating fresh water.

(g) A number of self-igniting "red lights" and a water-tight box of matches.

Fourth. All loose equipment must be securely attached to the boat or pontoon raft to which it belongs.

STOWAGE OF BOATS—NUMBER OF DAVITS

The minimum number of sets of davits is fixed in relation to the length of the vessel; provided that a number of sets of davits greater than the number of boats necessary for the accommodation of all the persons on board may not be required.

HANDLING OF THE BOATS AND RAFTS

All the boats and rafts must be stowed in such a way that they can be launched in the shortest possible time and that, even under unfavorable conditions of list and trim from the point of view of the handling of the boats and rafts, it may be possible to embark in them as large a number of persons as possible.

The arrangements must be such that it may be possible to launch on either side of the vessel as large a number of boats and rafts as possible.

STRENGTH AND OPERATION OF THE DAVITS

The davits shall be of such strength that the boats can be lowered with their full complement of persons and equipment, the vessel being assumed to have a list of fifteen degrees.

The davits must be fitted with a gear of sufficient power to insure that the boat can be turned out against the maximum list under which the lowering of the boats is possible on the vessel in question.

OTHER APPLIANCES EQUIVALENT TO DAVITS

Any appliance may be accepted in lieu of davits or sets of davits if the Commandant of the Coast Guard is satisfied after proper trials

that the appliance in question is as effective as davits for placing the boats in the water.

DAVITS

Each set of davits shall have a boat of the first class attached to it, provided that the number of open boats of the first class attached to davits shall not be less than the minimum number fixed by the table which follows.

If it is neither practicable nor reasonable to place on a vessel the minimum number of sets of davits required by the rules, the Commandant of the Coast Guard may authorize a smaller number of sets of davits to be fitted, provided always that this number shall never be less than the minimum number of open boats of the first class required by the rules.

If a large proportion of the persons on board are accommodated in boats whose length is greater than fifty feet, a further reduction in the number of sets of davits may be allowed exceptionally, if the Commandant of the Coast Guard is satisfied that the arrangements are in all respects satisfactory.

In all cases in which a reduction in the minimum number of sets of davits or other equivalent appliances required by the rules is allowed, the owner of the vessel in question shall be required to prove, by a test made in the presence of an officer designated by the Commandant of the Coast Guard, that all the boats can be efficiently launched in a minimum time.

The conditions of this test shall be as follows:

First. The vessel is to be upright and in smooth water.

Second. The time is the time required from the beginning of the removal of the boat covers, or any other operation necessary to prepare the boats for lowering, until the last boat or pontoon raft is afloat.

Third. The number of men employed in the whole operation must not exceed the total number of boat hands that will be carried on the vessel under normal service conditions.

Fourth. Each boat when being lowered must have on board at least two men and its full equipment as required by the rules.

The time allowed for putting all the boats into the water shall be fixed by the Commandant of the Coast Guard.

MINIMUM NUMBER OF DAVITS AND OF OPEN BOATS OF THE FIRST CLASS—MINIMUM BOAT CAPACITY

The following table fixes, according to the length of the vessel—

(A) The minimum number of sets of davits to be provided, to each of which must be attached a boat of the first class in accordance with this section.

(B) The minimum total number of open boats of the first class, which must be attached to davits, in accordance with this section.

(C) The minimum boat capacity required, including the boats attached to davits and the additional boats, in accordance with this section.

Registered length of the ship (feet)	(A) Minimum number of sets of davits	(B) Minimum number of open boats of the first class	(C) Minimum capacity of lifeboats
			<i>Cubic feet</i>
100 and less than 120	2	2	980
120 and less than 140	2	2	1,220
140 and less than 160	2	2	1,550
160 and less than 175	3	3	1,880
175 and less than 190	3	3	2,390
190 and less than 205	4	4	2,740
205 and less than 220	4	4	3,330
220 and less than 230	5	4	3,900
230 and less than 245	5	4	4,560
245 and less than 255	6	5	5,100
255 and less than 270	6	5	5,640
270 and less than 285	7	5	6,190
285 and less than 300	7	5	6,930
300 and less than 315	8	6	7,550
315 and less than 330	8	6	8,290
330 and less than 350	9	7	9,000
350 and less than 370	9	7	9,630
370 and less than 390	10	7	10,650
390 and less than 410	10	7	11,700
410 and less than 435	12	9	13,060
435 and less than 460	12	9	14,430
460 and less than 490	14	10	15,920
490 and less than 520	14	10	17,310
520 and less than 550	16	12	18,720
550 and less than 580	16	12	20,350
580 and less than 610	18	13	21,900
610 and less than 640	18	13	23,700
640 and less than 670	20	14	25,350
670 and less than 700	20	14	27,050
700 and less than 730	22	15	28,560
730 and less than 760	22	15	30,180
760 and less than 790	24	17	32,100
790 and less than 820	24	17	34,350
820 and less than 855	26	18	36,450
855 and less than 890	26	18	38,750
890 and less than 925	28	19	41,000
925 and less than 960	28	19	43,880
960 and less than 995	30	20	46,350
995 and less than 1,030	30	20	48,750

When the length of the vessel exceeds one thousand and thirty feet, the Commandant of the Coast Guard shall determine the minimum number of sets of davits and of open boats of the first class for that vessel.

EMBARKATION OF THE PASSENGERS IN THE LIFEBOATS AND RAFTS

Suitable arrangements shall be made for embarking the passengers in the boats, in accord with regulations by the Commandant of the Coast Guard.

In vessels which carry rafts there shall be a number of rope or wooden ladders always available for use in embarking the persons on to the rafts.

The number and arrangement of the boats, and (where they are allowed) of the pontoon rafts, on a vessel depends upon the total number of persons which the vessel is intended to carry: *Provided*, That there shall not be required on any voyage a total capacity in boats and (where they are allowed) pontoon rafts greater than that necessary to accommodate all the persons on board.

At no moment of its voyage shall any passenger steam vessel of the United States on ocean routes more than twenty nautical miles offshore have on board a total number of persons greater than that for whom accommodation is provided in the lifeboats and pontoon life rafts on board.

If the lifeboats attached to davits do not provide sufficient accommodation for all persons on board, additional lifeboats of one of the standard types shall be provided. This addition shall bring the total capacity of the boats on the vessel at least up to the greater of the two following amounts:

- (a) The minimum capacity required by these regulations;
- (b) A capacity sufficient to accommodate 75 per centum of the persons on board.

The remainder of the accommodation required shall be provided, under regulations of the Commandant of the Coast Guard, either in boats of class 1 or class 2, or in pontoon rafts of an approved type.

At no moment of its voyage shall any passenger steam vessel of the United States on ocean routes less than twenty nautical miles offshore have on board a total number of persons greater than that for whom accommodation is provided in the lifeboats and pontoon rafts on board. The accommodation provided in lifeboats shall in every case be sufficient to accommodate at least 75 per centum of the persons on board. The number and type of such lifeboats and life rafts shall be determined by regulations of the Commandant of the Coast Guard: *Provided*, That during the interval from May 15, to September 15, inclusive, any passenger steam vessel of the United States, on ocean routes less than twenty nautical miles offshore, shall

be required to carry accommodation for not less than 70 per centum of the total number of persons on board in lifeboats and pontoon life rafts, of which accommodation not less than 50 per centum shall be in lifeboats and 50 per centum may be in collapsible boats or rafts, under regulations of the Commandant of the Coast Guard.

At no moment of its voyage may any ocean-cargo steam vessel of the United States have on board a total number of persons greater than that for whom accommodation is provided in the lifeboats on board. The number and types of such boats shall be determined by regulations of the Commandant of the Coast Guard.

At no moment of its voyage may any passenger steam vessel of the United States on the Great Lakes, on routes more than three miles offshore, except over waters whose depth is not sufficient to submerge all the decks of the vessel, have on board a total number of persons, including passengers and crew, greater than that for whom accommodation is provided in the lifeboats and pontoon life rafts on board. The accommodation provided in lifeboats shall in every case be sufficient to accommodate at least 75 per centum of the persons on board. The number and types of such lifeboats and life rafts shall be determined by regulations of the Commandant of the Coast Guard: *Provided*, That during the interval from May 15 to September 15, inclusive, any such steamer shall be required to carry accommodation for not less than 50 per centum of persons on board in lifeboats and pontoon life rafts, of which accommodation not less than two-fifths shall be in lifeboats and three-fifths may be in collapsible boats or rafts, under regulations of the Commandant of the Coast Guard: *Provided further*, That all passenger steam vessels of the United States, the keels of which are laid after the 1st of July, 1915, for service on ocean routes, or for service from September 15 to May 15 on the Great Lakes on routes more than three miles offshore, shall be built to carry, and shall carry, enough lifeboats and life rafts to accommodate all persons on board, including passengers and crew: *And provided further*, That not more than 25 per centum of such equipment may be in pontoon life rafts or collapsible lifeboats.

At no moment of its voyage may any cargo steam vessel of the United States on the Great Lakes have on board a total number of persons greater than that for whom accommodation is provided in the lifeboats on board. The number and types of such boats shall be determined by regulations of the Commandant of the Coast Guard.

The number, types, and capacity of lifeboats and life rafts, together with the proportion of such accommodation to the number of persons on board which shall be carried on steam vessels on the Great Lakes, on routes three miles or less offshore or over waters whose depth is not sufficient to submerge all the decks of the vessels, and on all other lakes, and on rivers, bays, and sounds, shall be determined by regulations of the Commandant of the Coast Guard.

The Commandant of the Coast Guard is authorized in specific cases to exempt existing vessels from the requirements of this section that the davits shall be of such strength and shall be fitted with a gear of sufficient power to insure that the boats can be lowered with their full complement of persons and equipment, the vessel being assumed to have a list of fifteen degrees, where their strict application would not be practicable or reasonable.

CERTIFICATED LIFEBOAT MEN—MANNING OF THE BOATS

There shall be for each boat or raft a number of lifeboat men at least equal to that specified as follows: If the boat or raft carries twenty-five persons or less, the minimum number of certificated lifeboat men shall be one; if the boat or raft carries twenty-six persons and less than forty-one persons the minimum number of certificated lifeboat men shall be two; if the boat or raft carries forty-one persons and less than sixty-one persons the minimum number of certificated lifeboat men shall be three; if the boat or raft carries from sixty-one to eighty-five persons, the minimum number of certificated lifeboat men shall be four; if the boat or raft carries from eighty-six to one hundred and ten persons, the minimum number of certificated lifeboat men shall be five; if the boat or raft carries from one hundred and eleven to one hundred and sixty persons, the minimum number of certificated lifeboat men shall be six; if the boat or raft carries from one hundred and sixty-one to two hundred and ten persons, the minimum number of certificated lifeboat men shall be seven; and, thereafter, one additional certificated lifeboat man for each additional fifty persons: *Provided*, That if the raft carries fifteen persons or less a licensed officer or able seaman need not be placed in charge of such raft: *Provided further*, That one-half the number of rafts carried shall have a capacity of exceeding fifteen persons.

The allocation of the certificated lifeboat men to each boat and raft remains within the discretion of the master, according to the circumstances.

By "certificated lifeboat man" is meant any member of the crew who holds a certificate of efficiency issued under the authority of the Commandant of the Coast Guard, who is hereby directed to provide for the issue of such certificates.

In order to obtain the special lifeboat man's certificate the applicant must prove to the satisfaction of an officer designated by the Commandant of the Coast Guard that he has been trained in all the operations connected with launching lifeboats and the use of oars; that he is acquainted with the practical handling of the boats themselves; and, further, that he is capable of understanding and answering the orders relative to lifeboat service.

MANNING OF BOATS

A licensed officer or able seaman shall be placed in charge of each boat or pontoon raft; he shall have a list of its lifeboat men, and

other members of its crew which shall be sufficient for her safe management, and shall see that the men placed under his orders are acquainted with their several duties and stations.

A man capable of working the motor shall be assigned to each motor boat.

The duty of seeing that the boats, pontoon rafts, and other life-saving appliances are at all times ready for use shall be assigned to one or more officers.

MUSTER ROLL AND DRILLS

Special duties for the event of an emergency shall be allotted to each member of the crew.

The muster list shows all these special duties, and indicates, in particular, the station to which each man must go, and the duties that he has to perform.

Before the vessel sails the muster list shall be drawn up and exhibited, and the proper authority, to be designated by the Commandant of the Coast Guard, shall be satisfied that the muster list has been prepared for the vessel. It shall be posted in several parts of the vessel, and in particular in the crew's quarters.

MUSTER LIST

The muster list shall assign duties to the different members of the crew in connection with—

- (a) The closing of the water-tight doors, valves, and so forth.
- (b) The equipment of the boats and rafts generally.
- (c) The launching of the boats attached to davits.
- (d) The general preparation of the other boats and the pontoon rafts.
- (e) The muster of the passengers.
- (f) The extinction of fire.

The muster list shall assign to the members of the stewards' department their several duties in relation to the passengers at a time of emergency. These duties shall include—

- (a) Warning the passengers.
- (b) Seeing that they are dressed and have put on their life jackets in a proper manner.
- (c) Assembling the passengers.
- (d) Keeping order in the passages and on the stairways, and, generally, controlling the movements of the passengers.

The muster list shall specify definite alarm signals for calling all the crew of the boat and fire stations, and shall give full particulars of these signals.

MUSTERS AND DRILLS

Musters of the crews at their boat and fire stations, followed by boat and fire drills, respectively, shall be held at least once a week, either in port or at sea. An entry shall be made in the official log book of these drills, or of the reason why they could not be held.

Different groups of boats shall be used in turn at successive boat drills. The drills and inspections shall be so arranged that the crew thoroughly understand and are practiced in the duties they have to perform, and that all the boats and pontoon rafts on the ship with the gear appertaining to them are always ready for immediate use.

LIFE JACKETS AND LIFE BUOYS

A life jacket of an approved type, or other appliance of equal buoyancy and capable of being fitted on the body, shall be carried for every person on board, and, in addition, a sufficient number of life jackets, or other equivalent appliances, suitable for children.

First. A life jacket shall satisfy the following conditions:

(a) It shall be of approved material and construction.

(b) It shall be capable of supporting in fresh water for twenty-four hours fifteen pounds avoirdupois of iron.

Life jackets the buoyancy of which depends on air compartments are prohibited.

Second. A life buoy shall satisfy the following conditions:

(a) It shall be of solid cork or any other equivalent material.

(b) It shall be capable of supporting in fresh water for twenty-four hours at least thirty-one pounds avoirdupois of iron.

Life buoys filled with rushes, cork shavings, or granulated cork, or any other loose granulated material, or whose buoyancy depends upon air compartments which require it to be inflated, are prohibited.

Third. The minimum number of life buoys with which vessels are to be provided is fixed as follows:

Vessels under one hundred feet in length, minimum number of buoys, two; vessels one hundred feet and less than two hundred feet in length, minimum number of buoys, four, of which two shall be luminous; vessels two hundred feet and less than three hundred feet in length, minimum number of buoys, six, of which two shall be luminous; vessels three hundred feet and less than four hundred feet in length, minimum number of buoys, twelve, of which four shall be luminous; vessels four hundred feet and less than six hundred feet in length, minimum number of buoys, eighteen, of which nine shall be luminous; vessels six hundred feet and less than eight hundred feet in length, minimum number of buoys, twenty-four, of which twelve shall be luminous; vessels eight hundred feet and over in

length, minimum number of buoys, thirty, of which fifteen shall be luminous.

Fourth. All the buoys shall be fitted with beckets securely seized. Where two buoys only are carried, one shall be fitted with a life line at least fifteen fathoms in length, and where more than two buoys are carried, at least one buoy on each side shall be fitted with a life line of at least fifteen fathoms in length. The lights shall be efficient self-igniting lights which can not be extinguished in water and they shall be kept near the buoys to which they belong, with the necessary means of attachment.

Fifth. All the life buoys and life jackets shall be so placed as to be readily accessible to the persons on board; their position shall be plainly indicated so as to be known to the persons concerned.

The life buoys shall always be capable of being rapidly cast loose, and shall not be permanently secured in any way. The owner of any vessel who neglects or refuses to provide and equip his vessel with such lifeboats, floats, rafts, life preservers, line-carrying projectiles and the means of propelling them, drags, pumps, or other appliances, as are required under the provisions of this section, or under the regulations of the Commandant of the Coast Guard, authorized by and made pursuant hereto, shall be fined not less than \$500, nor more than \$5,000, and every master of a vessel who shall fail to comply with the requirements of this section, and the regulations of the Commandant of the Coast Guard, authorized by and made pursuant hereto, shall upon conviction be fined not less than \$50, nor more than \$500. R.S. § 4488; Mar. 2, 1889, c. 418, § 1, 25 Stat. 1012; Apr. 11, 1891, c. 41, 51, 27 Stat. 16; Mar. 3, 1905, c. 1454, § 3, 33 Stat. 1024; Mar. 4, 1915, c. 153, § 14, 38 Stat. 1170; June 12, 1916, c. 141, 39 Stat. 224; June 30, 1932, c. 314, §§ 501, 502(b), 47 Stat. 415; May 27, 1936, c. 463, § 1, 49 Stat. 1380; Aug. 10, 1939, c. 643, 53 Stat. 1343; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097; Aug. 30, 1954, c. 1076, § 1(29), 68 Stat. 968.

Historical Note

Derivation. Act Feb. 28, 1871, c. 100, § 52, 16 Stat. 455.

References in Text. For distribution of title 52, sections 4399-4500, of the Revised Statutes, referred to in the text, of which this section is a part, see note under section 170 of this title.

Codification. R.S. § 4488, as enacted in the Revised Statutes, was as follows: "Every steamer navigating the ocean, or any lake, bay, or sound of the United States, shall be provided with such numbers of lifeboats, floats, rafts, life-preservers, and drags, as will best secure the safety of all persons on board such vessel in case of disaster; and every seagoing vessel carrying passengers, and

every such vessel navigating any of the northern or northwestern lakes, shall have the lifeboats required by law, provided with suitable boat-disengaging apparatus, so arranged as to allow such boats to be safely launched while such vessels are under speed or otherwise, and so as to allow such disengaging-apparatus to be operated by one person, disengaging both ends of the boat simultaneously from the tackles taken by which it may be lowered to the water. And the board of supervising inspectors shall fix and determine, by their rules and regulations, the kind of lifeboats, floats, rafts, life-preservers, and drags that shall be used on such vessels, and also the kind and capacity of pumps or

other appliances for freeing the steamer from water in case of heavy leakage, the capacity of such pumps or appliances being suited to the navigation in which the steamer is employed."

It was amended by Act Mar. 2, 1889, by inserting after the words "life-preservers," wherever they occurred, the words "line-carrying projectiles, and the means of propelling them."

It was again amended by Act Mar. 3, 1905, principally by adding the following provisions: "Every vessel subject to the provisions of this title shall, while in operation, carry one life-preserver for each and every person allowed to be carried on said vessel by the certificate of inspection, including each member of the crew: Provided, however, That upon such vessels and under such conditions as are specified in section forty-four hundred and eighty-two floats may be substituted for life-preservers. Any person who willfully and knowingly manufactures or sells, or offers for sale, or has in his possession with intent to sell, life-preservers containing metal or other nonbuoyant material, for the purpose of increasing the weight thereof, or more metal or other such material than is reasonably necessary for the construction thereof, or who shall so manufacture, sell, offer for sale, or possess with intent to sell any other articles commonly used for preservation of life or the prevention of fire on board vessels subject to the provisions of this title, which articles shall be so defective as to be inefficient to accomplish the purposes for which they are respectively intended and designed, shall upon conviction, be fined not more than two thousand dollars, and may, in addition thereto, in the discretion of the court be imprisoned not exceeding five years."

It was again amended by Act Mar. 4, 1915, by adding to the section as last amended all that part of the section as set forth here beginning with the words "The powers bestowed by this section upon the Beard of Supervising Inspectors in respect of life-boats, floats," etc., to the end of the section, with the exception of the third and fourth subdivisions under the fourth subsection headed "Life Jackets and Life Buoys," which in said last-named amendment read as follows:

"Third. The minimum number of life buoys with which vessels are to be provided is fixed as follows:

"Length of the vessel under four hundred feet, minimum number of buoys, twelve; length of the vessel, four hun-

dred and under six hundred feet, minimum number of buoys, eighteen; length of the vessel, six hundred and under eight hundred feet, minimum number of buoys, twenty-four; length of the vessel, eight hundred feet and over, minimum number of buoys, thirty.

"Fourth. All the buoys shall be fitted with beackets securely seized. At least one buoy on each side shall be fitted with a life line of at least fifteen fathoms in length. The number of luminous buoys shall not be less than one-half of the total number of life buoys, and in no case less than six. The lights shall be efficient self-igniting lights which can not be extinguished in water, and they shall be kept near the buoys to which they belong, with the necessary means of attachment."

The section was further amended by Act June 12, 1916, by striking out the subdivisions above quoted and substituting therefor other subdivisions three and four, so as to make the section read as set forth here.

Section 2 of said Act Mar. 2, 1889, provided that the Act should take effect February 1, 1890. Said amending Act was suspended for one year, by Act Mar. 29, 1890, c. 56, 26 Stat. 33; and the Secretary of the Treasury was authorized to suspend it for a further period of one year, by Act Mar. 3, 1891, c. 549, 26 Stat. 1083, so far as it related to steamers plying exclusively upon lakes or bays. The provision inserted by said amending Act was repealed by Act Apr. 11, 1892, in so far as it related to the carrying of said line-carrying projectiles, etc., on steamers plying exclusively upon any of the lakes, bays, or sounds of the United States. Said repealing Act was as follows:

"Be it enacted, etc., That the provisions of an act entitled 'An act to amend sections forty-four hundred and eighty-eight and forty-four hundred and eighty-nine of the Revised Statutes, requiring life-saving appliances on steamers,' approved March second, eighteen hundred and eighty-nine, be, and the same are hereby, repealed so far as they relate to the carrying of line-carrying projectiles and the means of propelling them on steamers plying exclusively upon any of the lakes, bays, or sounds of the United States.

"Sec. 2. That nothing herein contained shall be construed to repeal or affect the provisions of said act so far as they apply to ocean-going steamers; and that all acts or parts of acts inconsistent with this be, and the same are hereby, repealed."

The amendatory Act of Mar. 3, 1905, may be regarded as superseding, not only the prior amendatory Act of Mar. 2, 1889, but also the repealing Act of Apr. 11, 1892.

Provisions of the amendatory Act of Mar. 4, 1915, omitted here, amended R. S. § 4463, incorporated as section 222 of this title, and repealed R.S. § 4489.

The section last mentioned, as amended by Act Mar. 2, 1889, read as follows: "The owner of any such steamer who neglects or refuses to provide such lifeboats, floats, rafts, life-preservers, line-carrying projectiles, and the means of propelling them, drags, pumps, or appliances, as are, under the provisions of the preceding section, required by the board of supervising inspectors, and approved by the Secretary of the Treasury, shall be fined one thousand dollars."

1954 Amendment. Act Aug. 30, 1954, amended section by repealing paragraph which required that all regulations authorized by this section be submitted to Congress as soon as practicable after being made.

1939 Amendment. First par., first two sentences amended by Act Aug. 10, 1939.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Execu-

tive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

References to the Secretary of Commerce and the Board of Supervising Inspectors throughout this section were changed to Commandant of the Coast Guard, and provisions for approval of regulations by the Secretary of Commerce were omitted, on authority of 1946 Reorg. Plan No. 3. Reference to Supervising Inspector General was changed to Director of the Bureau of Marine Inspection and Navigation and then to Commandant of the Coast Guard on authority of Acts June 30, 1932, and May 27, 1936, and said Reorg. Plan. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

International Convention for Safety of Life at Sea, 1929. International Convention for Safety of Life at Sea, 1929, and enforcement thereof, see 54 Stat. Pt. 2, 1683, particularly Arts. 13-23 and Regulations XXIV-XL of such Treaty, and Ex.Ord.No.7548, Feb. 5, 1937, 2 F.R. 307. See, also, note under section 170 of this title.

Legislative History: For legislative history and purpose of Act Aug. 30, 1954, see 1954 U.S.Code Cong. and Adm.News, p. 3539.

Cross References

Equipment of seagoing barges with life-saving appliances, see section 396 of this title.

Section as applicable to foreign private steam vessels, see section 362 of this title.

Notes of Decisions

Duty of master 8
Effective date 1
Evidence 9
Indictment 8
Life preservers 5
Lifeboats and rafts 4
Limitation of liability 6
Negligence 7
Vessels within section 3

1. Effective date

This section became effective on November 4, 1915, as to United States vessels and on March 4, 1916, as to all other vessels. 1915, 30 Op.Atty.Gen. 334.

2. Vessels within section

Canadian passenger vessel having complied with Canadian law, her American

certificate of inspection relieved her from further compliance with American law respecting life-saving equipment. *The Princess Sophia*, C.C.A.Wash.1932, 61 F. 2d 339, certiorari denied 53 S.Ct. 396, 238 U.S. 604, 77 L.Ed. 980.

The proviso to this section, added by amendment "that foreign vessels, leaving ports of the United States, shall comply with the rules herein prescribed as to life-saving appliances, their equipment and the manning of same," applies only to such foreign vessels as were subject to the operation of the original section, as defined in section 362 of this title. *Petition of Canadian Pac. Ry. Co.*, D.C. Wash.1921, 273 F. 180.

This section is applicable to private foreign steam vessels which carry passengers. *La Bourgogne*, D.C.N.Y.1900, 104 F. 823.

A vessel engaged in carrying freight between ports in different states, which on one occasion carries a load of passengers for purposes of a prize fight between ports in the same state, was not subject to a penalty for failure to comply with Act Aug. 30, 1852, c. 106, §§ 5, 9. *The Thomas Swan*, D.C.N.Y.1872, Fed. Cas.No.13,931.

Act Aug. 30, 1852, c. 106, §§ 3-5, requiring steam vessels carrying passengers to be provided with life preservers, etc., applied to a vessel which actually carried passengers, though not usually and regularly engaged in that business. *U. S. v. The Thomas Swan*, D.C.S.C.1856, Fed.Cas.No.16,480.

Where employee was drowned when small boat, allegedly built to accommodate not over three people, sank while being used to transport five grown men across river, in death action against employer, this section making regulations regarding life-saving appliances was inapplicable. *Tucker v. Holly Hill Lumber Co.*, 1942, 20 S.E.2d 704, 200 S.C. 259.

The steam vessel *Taurus*, used in transporting persons for hire from New York City to and from the fishing banks in the Atlantic Ocean from 8 to 10 miles outside the lower bay of New York harbor, is subject to certain provisions of this section. 1916, 30 Op.Atty.Gen. 537.

When not actually carrying passengers, neither foreign cargo nor foreign passenger steam vessels leaving ports of the United States are subject to the regulations prescribed by this section. 1913, 30 Op.Atty.Gen. 441.

3. Duty of master

Under this section and regulation of board of supervising inspectors, duty respecting fire drills and boat drills on passenger-carrying vessels and respecting instruction of passengers in use of life preservers and drilling of seamen in use of oars is the duty of the master, and imposed on subordinates only when assigned to them by the master, and mate could not be convicted of criminal neglect respecting such matters unless negligent with respect to duty assigned to him by the master. *U. S. v. Abbott*, C.C.A.N.Y.1937, 89 F. 2d 166.

While it is not primarily the duty of the master to equip a vessel with life-preservers, it is his duty to exercise care to see that such equipment is supplied and kept in efficient state. *U. S. v. Van Schaick*, C.C.N.Y.1904, 134 F. 592.

Responsibility for drills was placed by this section and regulations directly upon master and local inspectors. *New York & Cuba Mail S. S. Co. v. Continental Ins. Co. of City of New York*, D.C.N.Y.1940, 32 F.Supp. 251, reversed on other grounds 117 F.2d 404, certiorari denied 61 S.Ct. 1103, 313 U.S. 580, 85 L. Ed. 1537.

4. Lifeboats and rafts

Sufficiency of equipment of vessel with lifeboats was measured by the regulations adopted by the board of supervising inspectors, which regulations when approved by the Secretary of the Treasury, "have the force of law." *Deslions v. La Compagnie Générale Transatlantique*, N.Y.1908, 28 S.Ct. 664, 210 U.S. 95, 52 L.Ed. 973.

Fact that United States required the operator of a passenger steamship to place lifeboats so they might be launched quickly did not render proper a ruling as a matter of law that only practicable guard for the opening in the ship's rail, rendering quick launching possible, was an easily removable chain. *Hanley v. Eastern S. S. Co.*, 1915, 109 N.E. 167, 221 Mass. 125.

By the fourth section of Act Aug. 30, 1852, c. 106, vessels which were required to have two, three, four, or six lifeboats had to have one of metal, fireproof. 1853, 5 Op.Atty.Gen. 676.

5. Life preservers

In action under section 688 of this title to recover for death of a tugboat deck-hand who was drowned in Hudson river when he fell overboard, proofs established that alleged fact that line at-

tached to life preserver was not of sufficient length, was not the "proximate cause" of the deckhand's death, where the life preserver came within a few feet of the deckhand, but, due to exhaustion, he could not reach the life preserver. *Cvelich v. Erie R. Co.*, 1942, 27 A.2d 616, 128 N.J.L. 621, affirmed 29 A.2d 869, 129 N.J.L. 389.

6. Limitation of Liability

Shipowner's violation of this section, prescribing life-saving appliances, placed burden on it of showing violation could not have caused wrecking of vessel, but did not of itself defeat right to limitation of liability. *The Princess Sophia*, C.C.A.Wash.1932, 61 F.2d 339, certiorari denied 53 S.Ct. 396, 288 U.S. 604, 77 L.Ed. 980.

Evidence established that loss of all passengers and crew on sinking of vessel was not attributable to any insufficiency of lifeboats, as respects right to limitation of liability. *Id.*

The owner of a steamship is not debarred from maintaining proceedings for limitation of liability on account of claims arising from her loss at sea on the ground that she was at the time violating this section. *In re La Bourgonne*, D.C.N.Y.1902, 117 F. 263, reversed on other grounds 139 F. 433, 71 C.C.A. 489, affirmed 28 S.Ct. 664, 210 U.S. 95, 52 L.Ed. 973.

7. Negligence

In libel on indemnity marine policy, evidence established actual fault or privity of corporate shipowner, comprising failure to provide proper watch, hold fire and boat drills, or prepare men and equipment for emergency of fire and abandonment of vessel, precluding recovery with respect to shipowner's liability for damages resulting from fire at sea. *New York & Cuba Mail S. S. Co. v. Continental Ins. Co. of City of New York*, C.C.A.N.Y.1941, 117 F.2d 404, certiorari denied 61 S.Ct. 1103, 313 U.S. 580, 85 L.Ed. 1537.

8. Indictment

An indictment for conspiracy to defraud the United States by weighting life-preservers so that they would pass the inspection required by this section need not allege that the vessel on which the life-preservers were to be used was not a public vessel, which was excepted from the operation of this section by section 362 of this title. *U. S. v. Stone*, D.C.N.J.1905, 135 F. 392.

An indictment for conspiracy to defraud the United States, which charged that defendants secretly inserted a piece of iron weighing half a pound in the center of each of a large number of cork blocks made by them, intending that such blocks should be used in making life-preservers for the equipment of steamers navigating the ocean and lakes, bays and sounds of the United States, sufficiently show that life-preservers so made would not fulfill the law and regulations of the United States. *Id.*

9. Evidence

Where insurer sought to escape liability for loss by fire under indemnity marine policy covering loss sustained without "actual fault or privity" or "act or neglect" of insured or its managing officers on ground that insured ship had no "Fire Quarters Bill" and muster roll as required by this section, copies of station bills on ship which were not shown to be true copies of station bills on ship were inadmissible. *New York & Cuba Mail S. S. Co. v. Continental Ins. Co. of City of New York*, D.C.N.Y.1940, 32 F.Supp. 251, reversed on other grounds 117 F.2d 404, certiorari denied 61 S.Ct. 1103, 313 U.S. 580, 85 L.Ed. 1537.

Evidence failed to show that insured ship had no "Fire Quarters Bill" and muster roll as required by this section so as to preclude recovery for loss by fire on indemnity marine policy covering loss sustained without "actual fault or privity" or "act or neglect" of insured or its managing officers. *Id.*

§ 482. Water-tight bulkheads in lake steamers carrying passengers

Every seagoing steamer, and every steamer navigating the great northern or northwestern lakes, carrying passengers, the building of which has been completed after the 28th day of August, 1871, shall have not less than three water-tight cross bulkheads, such bulkheads to reach to the main deck in single-decked vessels, otherwise to the deck next below the main deck; to be made of iron plates, sustained

upon suitable framework; and to be properly secured to the hull of the vessel. The position of such bulkheads and the strength of material of which the same shall be constructed shall be determined by the general rules of the Commandant of the Coast Guard. R.S. § 4490; Feb. 27, 1877, c. 69, § 1, 19 Stat. 252; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Derivation. Act Feb. 28, 1871, c. 100, § 53, 18 Stat. 455.

Codification. R.S. § 4490, prior to incorporation in the Code, was amended by Act Feb. 27, 1877, which substituted "carrying" for "carry" before "passengers."

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 28, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5,

Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

"Commandant of the Coast Guard" was substituted for "Board of Supervising Inspectors" on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Cross References

Water-tight bulkheads not required on steam vessels of one hundred tons or under engaged in coastwise bays and harbors, see section 483 of this title.

§ 483. Water-tight bulkheads not required on certain steamers

Steam vessels of one hundred tons burden or under, engaged in the coastwise bays and harbors of the United States, may be licensed by the Coast Guard to carry passengers or excursions on the ocean or upon the Great Lakes of the North or Northwest, not exceeding fifteen miles from the mouth of such bays or harbors, without being required to have the three water-tight cross bulkheads provided by section 482 of this title for other passenger steamers: *Provided*, That in the judgment of the Coast Guard such steamers shall be safe and suitable for such navigation without danger to human life, and that they shall have one water-tight collision bulkhead not less than five feet abaft the stem of said steamer. July 9, 1886, c. 755, § 3, 24 Stat. 129; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agen-

cies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury,

with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof,

when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

References to United States local inspectors of steam vessels were changed to Coast Guard on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

§§ 484—487. Repealed. June 19, 1934, c. 652, § 602(e), as added May 20, 1937, c. 229, § 15, 50 Stat. 17, and amended Aug. 13, 1954, c. 735, § 5, 68 Stat. 729, eff. Nov. 13, 1954.

Historical Note

Sections are now covered by section 151 et seq. of Title 47, Telegraphs, Telephones, and Radio-telegraphs.

Section 484, Acts June 24, 1910, c. 379, § 1, 36 Stat. 629; July 23, 1912, c. 250, § 1, 37 Stat. 199, related to radio-communication apparatus on vessels navigating the Great Lakes.

Sections 485 and 486, Act June 24, 1910, c. 379, §§ 2, 3, 36 Stat. 630, related to efficiency of radio apparatus, penalty for violations, and separate offenses.

Section 487, Acts June 24, 1910, c. 379, § 4, 36 Stat. 630; Mar. 4, 1913, c. 141, § 1, 37 Stat. 736; June 19, 1934, c. 652, Title I, § 1, Title VI, § 604(a), 48 Stat. 1064, 1103, related to regulations by Federal Communications Commission.

§ 488. Substitute for second operator of radio apparatus on cargo steamers navigating the Great Lakes

Historical Note

Codification. Section, Act July 23, 1912, c. 250, § 2, 37 Stat. 200, which related to substitution for second radio operator referred to in section 484 of

this title, was dependent for its existence on said section 484 and was omitted because of the repeal of that section.

§ 489. Use of instruments for security of life to be approved

No kind of instrument, machine, or equipment, for the better security of life, provided for by title 52 of the Revised Statutes, shall be used on any steam vessel which shall not first be approved by the Commandant of the Coast Guard. R.S. § 4491; Feb. 14, 1903, c. 552, § 10, 32 Stat. 829; Mar. 4, 1913, c. 141, § 1, 37 Stat. 736; 1946 Reorg. Plan No. 3, §§ 101–104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Derivation. Act Feb. 28, 1871, c. 100, § 11, 16 Stat. 445.

References in Text. For distribution of title 52, sections 4399-4500, of the Revised Statutes, referred to in the text, of which this section is a part, see note under section 170 of this title.

Codification. Upon incorporation into the Code, the words "Secretary of Commerce" were substituted for "Secretary of the Treasury," to conform to Acts Feb. 14, 1903 and Mar. 4, 1913. See, note under section 467 of this title.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950

Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

"Commandant of the Coast Guard" was substituted for "Board of Supervisory Inspectors, and also by the Secretary of Commerce" on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Notes of Decisions

Review 3
Spark arresters 1
Steam gauges 2

1. Spark arresters

This section does not prevent the use of a spark arrester by vessel owners without such approval. *Cheboygan Lumber Co. v. Delta Transp. Co.*, 1894, 58 N.W. 630, 100 Mich. 16.

2. Steam gauges

When a recording steam gauge of a certain make has been adopted by the board of supervising inspectors and the Secretary of the Treasury, a steamer using such a one which got out of order and frequently required repairs, could not be seized for having in use a defec-

tive register, and the owners complied with the law by purchasing and trying one of the adopted registers, and they could not have been mulcted in a penalty for the insufficiency of the one purchased. *The Lac La Belle*, D.C. Wis. 1872, 3 Biss. 313, 14 Fed. Cas. No. 7,968.

The approval under this section of steam registers was limited to those instruments which came within the terms of section 392 of this title, and which were also capable of being secured as required by section 393 of this title. 1886, 18 Op. Atty. Gen. 365.

3. Review

The decision of the board of supervising inspectors upon a matter properly submitted to it was not reviewable by the Secretary of the Treasury. 1884, 18 Op. Atty. Gen. 77.

§ 490. Barges carrying passengers

Every barge carrying passengers, while in tow of any steamer, shall be subject to the provisions of sections 474-476 and 481 of this title relating to fire buckets, axes, life preservers, and yawls, to such extent as shall be prescribed by the Commandant of the Coast Guard; and for any violation of this section the penalty shall be \$200, recoverable one-half for the use of the informer. R.S. § 4492; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Derivation. Act Feb. 28, 1871, c. 100, § 46, 16 Stat. 453.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is

generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

"Commandant of the Coast Guard" was substituted for "Board of Supervising Inspectors" on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Cross References

Life-saving appliances on seagoing barges, see section 396 of this title.

Notes of Decisions

Intrastate towage 2
Lights 3
Penalties 4
Vessels within section

section, where the steamer was regularly enrolled and licensed, and subject to the laws of Congress. *The Gretna Green*, D.C. Ohio 1883, 20 F. 901.

3. Lights

The inspectors' rule requiring barges in tow to carry colored lights was unauthorized. *U. S. v. Miller*, D.C.N.Y. 1886, 26 F. 95.

4. Penalties

Where a scow temporarily equipped for the purpose and in tow of a tug carried a picnic party without life-preservers as required by regulations pursuant to this section, she is liable for the penalty thereby provided, though she was furnished to the party without charge except for expenses. *The Scow No. 1*, D.C.N.Y. 1909, 169 F. 717.

1. Vessels within section

A canal boat laden with coal for transportation, having on board the captain's wife and children, is not "a barge carrying passengers," within this section. *Eastern Transp. Line v. Cooper*, N.Y. 1879, 99 U.S. 78, 9 Otto 78, 25 L.Ed. 352. See, also, *U. S. v. Guess*, D.C.La. 1891, 48 F. 587.

2. Intrastate towage

Barges in tow of a steamboat, plying between ports in the same state, are not subject to the provisions of this

§ 491. Liability of master and owners for damage to passengers

Whenever damage is sustained by any passenger or his baggage, from explosion, fire, collision, or other cause, the master and the owner of such vessel, or either of them, and the vessel shall be liable to each and every person so injured, to the full amount of damage if it happens through any neglect or failure to comply with the provisions of title 52 of the Revised Statutes, or through known defects or imperfections of the steaming apparatus or of the hull; and any person sustaining loss or injury through the carelessness, neg-

ligence, or willful misconduct of any master, mate, engineer, or pilot, or his neglect or refusal to obey the laws governing the navigation of such steamers, may sue such master, mate, engineer, or pilot, and recover damages for any such injury caused by any such master, mate, engineer, or pilot. R.S. § 4493.

Historical Note

Derivation. Act Feb. 28, 1871, c. 100, § 43, 16 Stat. 453.

References in Text. For distribution of title 52, sections 4399-4500, of the Re-

vised Statutes, referred to in the text, of which this section is a part, see note under section 170 of this title.

Cross References

Owner's liability limited to proportion of any or all debts and liabilities that his individual share of vessels bears to the whole, see section 189 of this title.

Notes of Decisions

Admissibility of evidence 26
 Baggage losses 10
 Bathrooms 11
 Burden of proof 25
 Contract, limitation of liability by 23
 Contributory negligence 19
 Control 7
 Crew, competency and sufficiency 12
 Damages 29
 Doors and passageways 13
 Evidence
 Admissibility 26
 Weight and sufficiency 27
 Exclusiveness of remedy 20
 Gangplanks 14
 Inspections 9
 Instructions 28
 Invitees 5
 Knowledge of limitation of liability 24
 Liability generally 4
 Licensees and invitees 5
 Limitation of liability 22-24
 Generally 22
 Contract 23
 Notice or knowledge 24
 Misconduct of other passengers 15
 Negligence of owner, master, pilot, or crew 18
 Notice or knowledge of limitation of liability 24
 Passageways 13
 Passengers 6
 Pleading 21
 Punishment of passenger 16
 Purpose 1
 Repeal 2
 Seaworthiness of vessel 3
 State laws 3
 Stowage 17
 Supervision and control 7
 Weight and sufficiency of evidence 27

1. Purpose

The purpose of this section was intended to provide that damage was not to be subject to limitation under section 183 of this title and to provide additional safeguards on vessels carrying passengers and to compel as near as possible observance of safety laws and regulations. *New York & Cuba Mail S. S. Co. v. Continental Ins. Co. of City of New York*, D.C.N.Y.1940, 32 F.Supp. 251, reversed on other grounds 117 F.2d 404, certiorari denied 61 S.Ct. 1103, 313 U.S. 580, 85 L.Ed. 1537.

2. Repeal

This section was not repealed by section 189 of this title. *The Annie Faxon*, Wash.1896, 75 F. 312, 21 C.C.A. 366.

3. State laws

States cannot, by legislation, place burdens upon commerce with foreign nations or among the several states, whether the burdens be by way of tax upon its business, license upon its pursuit in particular channels, or conditions for carrying it on, but the legislation of a state, not directed against commerce or any of its regulations, but relating to the rights, duties, and liabilities of citizens, and only indirectly and remotely affecting the operations of commerce, is of obligatory force upon citizens within its territorial jurisdiction, whether on land or water, or engaged in commerce, foreign or interstate, so that, unless Congress makes some regulation touching the liability of parties for marine torts resulting in the death of the per-

Note 4

sons injured, state legislation may give a right of action in such cases to the personal representatives of the deceased. *Sherlock v. Alling*, Ind.1876, 93 U.S. 99, 3 Otto 99, 23 L.Ed. 819. See, also, *American Steamboat Co. v. Chase*, R.I.1873, 83 U.S. 522, 16 Wall. 522, 21 L.Ed. 369.

4. Liability generally

"The statute [this section] appears to us to declare that the owners and master of a steam vessel, and the vessel itself, shall be liable for all damages sustained by a passenger or his baggage, from any neglect to comply with the provisions of the law, no matter where the fault may lie; and that, in addition to this remedy, any person injured by the negligence of the pilot or engineer [master, mate, engineer, or pilot] may have his action directly against those officers." *Sherlock v. Alling*, Ind.1876, 93 U.S. 99, 3 Otto 99, 23 L.Ed. 819.

A steamship company is not an insurer as to passengers on the vessel, but only liable for "ordinary care"; that is, care according to the circumstances, which in case of stormy and dangerous weather conditions is a very high degree of care. *The Thessaloniki*, C.C.A.N.Y.1920, 267 F. 67, certiorari denied 41 S.Ct. 63, 254 U.S. 649, 65 L.Ed. 457.

Those in charge of a passenger steamer are not insurers of the safety of the passengers, but are bound to use the utmost care consistent with the nature and extent of the business in which they are engaged, in providing a reasonably safe steamer, and in its management. *The Tourist*, D.C.Me.1920, 265 F. 700.

"Section 4493 [this section] as appears by its title as well as by its provisions, was intended to provide for better security of life on board steam vessels. In *Sherlock v. Alling*, Ind.1876, 93 U.S. 99, 23 L.Ed. 819, a broad construction was given to that section; and it was held that under its provisions the master, the owner, and the vessel are liable for damages sustained by a passenger, arising through neglect to comply with the provisions expressed in [R.S.] title 52, [incorporated in part in this chapter] no matter where the fault might lie." *The Annie Faxon*, Wash.1896, 75 F. 312, 21 C.C.A. 366.

Facts did not bring the death of a passenger within this section. In *re Meyer*, D.C.Cal.1896, 74 F. 881.

Owners of vessels carrying passengers are not insurers of lives or safety of passengers, but they are held to a very high degree of care, prudence and foresight for safety of passengers. *Gardner v.*

Panama Canal Co., D.C.Canal Zone 1953, 115 F.Supp. 687.

Packet company was not liable for injury occurring beyond its line to holder of continuous passage, where it expressly negated liability beyond its own line. *Stewart Taxi-Service Co. v. Spencer*, 1926, 132 A. 153, 149 Md. 635.

5. Licensees and invitees

Generally, vessel owner shall not willfully or wantonly injure a licensee or expose him to hidden perils or fail to use due care to prevent injury to him after discovering that he is in danger. *Kermarec v. Compagnie Generale Transatlantique*, C.A.N.Y.1957, 245 F.2d 175.

The Acts of Congress confine the remedy in rem, for injuries from injurious escape of steam, to actions brought by passengers, and the remedy is in personam against owners for such injuries done to others on board. *The Highland Light*, C.C.Md.1867, Fed.Cas.No.8,477.

The vessel owner is liable where another is injured from the want of care or skill of the master. *Stone v. Ketland*, C.C.Pa.1804, Fed.Cas.No.13,483.

The only duty of a carrier of passengers by vessel to a licensee is to refrain from inflicting willful and wanton injury upon him. *Van Loon v. R. Lawrence Smith, Inc.*, 1917, 163 N.Y.S. 621, 176 App.Div. 547.

Whether defendant was guilty of negligence in its care of baggage on which the plaintiff, an invitee on defendant's boat, tripped and fell, and was injured, was a jury question. *Powell v. Great Lakes Transit Corporation*, 1922, 188 N.W. 61, 152 Minn. 90.

Where plaintiff went on defendant's boat to exchange farewells with friends, whom she did not accompany, nor perform services for, and who were not her relatives, of her household, nor her guests, and the defendant permitted people not passengers on its boat while at dock, and warned them ashore before starting, plaintiff was an invitee, to whom defendant owed only ordinary care. *Id.*

6. Passengers

Negligence in the care or management of boilers, for which skill is necessary, is culpable negligence, rendering the owners and the boat liable for damages, even in case of the gratuitous carriage of a passenger. *The New World v. King*, Cal.1853, 57 U.S. 499, 16 How. 489, 14 L.Ed. 1619.

A soldier transported under contract with the government, and discharged at sea during the voyage, does not thereby become a passenger in such a sense that the master is liable for allowing him to be subjected to military discipline. *White v. McDonough*, D.C.Cal.1875, Fed. Cas.No.17,552.

Until a passenger is on board the vessel, he is not subject to casualties or misfortunes occurring through stress of weather or otherwise. *Cobb v. Howard*, C.C.N.Y.1856, Fed.Cas.No.2,924.

7. Supervision and control

Passenger cannot recover for injuries when boarding tender in safe sea for shore visit, where ship's officer did not control his actions and he could see tender was rolling. *The Empress of Scotland*, D.C.N.Y.1928, 11 F.2d 783.

8. Seaworthiness of vessel

Plaintiff, who went aboard vessel with member of vessel's crew after member had secured issuance of pass by vessel owner to plaintiff, could not maintain an action against vessel owner on theory of unseaworthiness for injuries sustained in fall on stairway on vessel. *Kermarec v. Compagnie Generale Transatlantique*, C.A.N.Y.1957, 245 F.2d 175.

There is no implied warranty that the vessel is seaworthy at the beginning of the voyage, and whether or not she was technically so is immaterial in a passenger's suit for injuries. *The Oregon*, Wash.1904, 133 F. 609, 68 C.C.A. 603.

Under warranty of "seaworthiness", owner is liable to shipper of goods for any defects in vessel or its equipment, but such warranty does not run to passengers. *Gardner v. Panama Canal Co.*, D.C.Canal Zone 1953, 115 F.Supp. 687.

9. Inspections

The fact that the owners of a vessel did not apply for an inspection after a slight injury, which is not shown to have impaired her hull or machinery, and when she had been inspected but three months before, is not a failure to comply with the inspection law. *The Longfellow*, Ohio 1900, 104 F. 360, 45 C.C.A. 379.

It is as much the duty of an owner of a steamship to cause an inspection of a boiler which has been repaired in a substantial part as to cause an inspection of a new boiler before using the same and a failure to cause such inspection will render the owner liable to a passenger injured by an explosion.

The Annie Faxon, Wash.1896, 75 F. 312, 21 C.C.A. 366.

10. Baggage losses

A steamship company is an insurer as to the cargo and the passengers' baggage, unless the loss is within an exception of the bill of lading or passenger ticket. *The Thessaloniki*, C.C.A.N.Y. 1920, 267 F. 67, certiorari denied 41 S. Ct. 63, 254 U.S. 649, 65 L.Ed. 457.

No recovery can be had by a passenger on a wrecked steamship for lost articles not included within necessary baggage and effects which a traveler may be expected to carry with him, though the steamship company's limitation of liability on checked baggage had no application to unchecked baggage, or to clothing or other articles on the person. *The Virginia*, D.C.Md.1920, 266 F. 437.

A steamship company will not be liable for loss through wreck of large sums exceeding what a traveler reasonably may be expected to carry, or for merchandise not intended for personal use. *Id.*

Newspaper photographer, sent to take troop pictures, could recover of steamship company for loss by wreck of extra lens for camera carried with him, because he could not tell in advance precise focal length he would need. *Id.*

A steamship passenger should be permitted to recover for loss by wreck of Liberty bonds in a limited amount carried with him almost of necessity to escape rent of a safety vault consuming the interest return, though a carrier ordinarily is not liable for loss of securities. *Id.*

The vessel is liable for loss of baggage by theft from a stateroom in the lady's cabin which was properly fastened, where time and opportunity were given for a thief to enter such room without detection. *Walsh v. The H. M. Wright*, D.C.La.1854, Fed.Cas.No.17,115.

11. Bathrooms

Coaming around shower basin in bathroom on passenger vessel and shower curtain extending so low as to conceal coaming from view contributed to safety of passengers by preventing soapy water from shower from flooding bathroom floor and making it slippery and did not constitute hazards in violation of high degree of care owed by carrier to passengers. *Gardner v. Panama Canal Co.*, D.C.Canal Zone 1953, 115 F.Supp. 687.

That shower curtain was drawn so as to conceal coaming around shower basin

Note 12

in bathroom of passenger vessel instead of being chained back could not be imputed to owner and operator of vessel as ground of liability for injury sustained by passenger when she fell into shower basin, where fall occurred more than three hours after vessel left port and several persons had access to bathroom. *Id.*

12. Crew, competency and sufficiency

In the absence of any statute requiring it, there is no duty resting upon a coastwise vessel to have a physician or surgeon on board for the treatment of passengers who may be injured. *The City of St. Louis*, D.C.N.Y.1916, 238 F. 381.

The crew must not only be sufficient in numbers, but competent for all the duties. *In re Pacific Mail S. S. Co.*, Cal.1904, 130 F. 76, 84 C.C.A. 410, 69 L.R.A. 71, certiorari denied 25 S.Ct. 790, 195 U.S. 632, 49 L.Ed. 353.

13. Doors and passageways

Steamship company was liable for injury to passenger from slamming of door which was unprotected from wind and not equipped with door check. *Osi-puk v. Oceanic Steam Nav. Co.*, D.C.N.Y. 1932, 58 F.2d 673.

14. Gangplanks

Where a steamer passenger, sitting near the gangplank, had his leg broken by the swinging of the plank, due to the motion of the steamer when the captain swung the wheel preparatory to leaving a landing, the steamer held at fault, in that a deck hand, after calling, "All right!" and a few seconds later, "Hold her!" shoved out the gangplank to the wharf, without waiting to see whether the captain understood the last signal. *The Tourist*, D.C.Me.1920, 265 F. 700.

Passenger injured by falling from unguarded gangplank, which descended at sharp incline and necessitated assumption of stooping position, was not required to establish particular condition causing fall. *Mawson v. Eagle Harbor Transp. Co.*, 1923, 268 P. 595, 148 Wash. 258.

Negligence of transportation company furnishing steep, unguarded gangplank descending from dock, in use of which passengers were required to stoop, was for jury. *Id.*

15. Misconduct of other passengers

The master is liable to make good the loss where a common gambler cheated

a minor passenger out of a sum of money, and he failed, after notice, to compel restitution. *Smith v. Wilson*, D.C.Ala. 1872, Fed.Cas.No.13,128.

The duties of steamboats carrying passengers to guard them against violence or negligence of other passengers stated in a charge to a jury. *Flint v. Norwich & N. Y. Transp. Co.*, C.C.Conn. 1863, Fed.Cas.No.4,873.

16. Punishment of passenger

The master is authorized to use force to a passenger, not for a mere breach of regulations, but only when there is a clear necessity for it. *Krauskopp v. Ames*, D.C.Pa.1846, Fed.Cas.No.7,931.

No punishment higher than a reprimand should ever be inflicted on a passenger without conference with the other officers and entry of the facts on the log book. *Id.*

17. Stowage

Where boxes of tin are so stowed in the steerage room that the rolling of the vessel caused one to fall upon a steerage passenger sitting beside the pile, the vessel was liable. *The Oriflamme*, D.C.Or.1876, Fed.Cas.No.10,572.

18. Negligence of owner, master, pilot, or crew

The relation between owner and pilot, as that of master and employee, is not changed, and the responsibility of the former for the negligence of the latter does not cease because the owners are obliged to take a pilot and are restricted in their choice to those licensed by the government inspectors. *Sherlock v. Alling*, Ind.1876, 93 U.S. 99, 3 Otto 99, 23 L.Ed. 819.

Visitor who, on basis of pass obtained from vessel owner by crew member, visited ship for personal and social reasons and who was injured in fall on stairway when canvas runner on stairway allegedly slipped from under visitor's foot could not recover from vessel owner on theory of negligence in absence of showing that vessel owner knew that the stairs were in a dangerous condition or that tacks used to hold the runner in place were inadequate for such purpose. *Kermarec v. Compagnie Generale Transatlantique*, C.A.N.Y.1957, 245 F.2d 175.

While neglect of a shipowner to provide watchman, as required by section 470 of this title, would render such owner liable under this section, for injuries to passengers, or their effects which happen through such neglect, the neglect of

a watchman provided to perform his duty is without privity of the owner. *Petition of Canadian Pac. Ry. Co.*, D.C. Wash.1921, 278 F. 180.

Where a passenger fell from her berth and sprained her ankle and the injury was treated by the steward by the proper application of standard remedies, there was no negligence on the part of the vessel or the steward which rendered it liable for any ill effects which may have followed the injury. *The City of St. Louis*, D.C.N.Y.1916, 238 F. 381.

The vessel owners are liable for torts of the master when they involve a breach of the passenger's contract and are done while acting within the scope of his employment. *McGuire v. The Golden Gate*, C.C.Cal.1856, Fed.Cas.No.8,815.

19. Contributory negligence

Sixteen year old female passenger injured from slamming of door by wind when stepping over high sill was not contributorily negligent. *Osipuk v. Oceanic Steam Nav. Co.*, D.C.N.Y.1932, 58 F.2d 673.

Carriers of passengers by sea have a right to assume that passengers will exercise the care of reasonably prudent men. *The Tourist*, D.C.Me.1920, 265 F. 700.

A steamship passenger, sitting on a bench near the gangplank, who at several landings had received a general warning to look out for the gangplank, and who might have seen that his feet were within the reach of the gangplank if it should swing to the fullest possible extent, and must have seen the exposed character of a landing, was at fault in failing to get out of the way before his leg was struck by the swinging of the gangplank, but such passenger, who heard no specific warning that he was sitting in a dangerous place, though warned generally to look out for the gangplank, did not assume the risk of injury from the plank swinging against his leg, and was not guilty of willful, gross, and inexcusable fault. *Id.*

Passenger voluntarily encountering a seen danger, guilty of contributory negligence. *The Anglo Norman*, D.C.Cal. 1877, Fed.Cas.No.393.

Where a passenger's money is stolen from his stateroom in a steamboat by reason of his neglect to lock and bolt his stateroom door, the owners of the vessel are not liable. *The John Brooks*, D.C.Me.1872, Fed.Cas.No.7,335.

Where passenger could have seen distance from end of gangplank to floor

of dock, if she had looked, her failure to look, causing her to fall in stepping from plank to dock, constituted contributory negligence, precluding her from recovering for injuries sustained. *Johnson v. Washington Route*, 1922, 209 P. 1100, 121 Wash. 608.

20. Exclusiveness of remedy

The remedy given by this section for an injury to an employé on a steam vessel is merely cumulative, and does not exclude the right to any other remedy for such injury which may be given by the general admiralty law. *The Clatsop Chief*, D.C.Or.1881, 8 F. 767.

The remedy given against the officers of a vessel by this section does not preclude an action against the vessel. *Brown v. The D. S. Cage*, C.C.Tex.1872, Fed.Cas.No.2,002.

21. Pleading

An allegation that at time of injury plaintiff was "lawfully and rightfully upon said steamship Manchester" is insufficient to show relation of passenger and carrier. *Van Loon v. R. Lawrence Smith, Inc.*, 1917, 163 N.Y.S. 621, 176 App.Div. 547.

22. Limitation of Liability—Generally

This section does not supersede or displace the proceeding for limited liability. *Butler v. Boston & S. S. S. Co.*, Mass.1889, 9 S.Ct. 612, 130 U.S. 527, 32 L.Ed. 1017.

Where charterer of motorship, who agreed with contractor to deliver materials and supplies to place where wharf was being constructed and to transport all equipment back to certain place, permitted contractor's employees to accompany ship during transportation of such equipment without exacting or expecting pay, the charterer, on injury to such employees, was entitled to protection of Limited Liability Law, sections 182-188 of this title, since such employees were not passengers within this section. *Carlson v. A. Paladini, Inc.*, C.C.A.Cal.1925, 5 F.2d 387.

Act Feb. 28, 1871 [incorporated in part in this chapter] passed to provide for the better security of life on board steam vessels, and embracing this section makes exceptions in favor of passengers to the general rule of limitation of liability contained in sections 182 and 183 of this title, and the owner is not entitled to a limitation of liability for damages sustained by passengers from fire, when due to his negligence. *Hines v. Butler*, C.C.A.Md.1921, 278 F. 377, cer-

Note 22

tiorari denied 42 S.Ct. 185, 257 U.S. 659, 66 L.Ed. 421.

This section is supplementary to section 183 of this title, which declares the basic law of liability, and liability for damage coming within the provisions of this section cannot be limited either by owners of domestic vessels or of foreign vessels invoking limitation of liability under said section 183. *Petition of Canadian Pac. Ry. Co.*, D.C.Wash.1921, 278 F. 180.

Failure to comply with International Navigation Rules, chapter 2 of Title 33, did not subject the shipowner to unlimited liability for damage to passengers or their effects, under this section which deprived such owner of the right to limit liability for such damage only when "it happens through any neglect or failure to comply with the provisions of this title," of which the navigation rules were not a part. *Id.*

"Sections 4283 [section 183 of this title] and 4493 [this section] stand together in the Revised Statutes, and provide for two distinct classes of liability, the one prescribing the general rule that for damages, through negligent acts done without the privity or knowledge of the owner, liability should not exceed the amount or value of the interest of such owner in the vessel and her freight then pending; the other providing that for injury occurring through the neglect or failure of the owner to comply with the provisions of title 52 of the Revised Statutes [incorporated in part in this chapter] for the regulation of steam vessels, or occurring through known defects or imperfections of the steering apparatus or of the hull, there should be, as to passengers, liability to the full amount of the damage. They are statutes in pari materia—the one creating a general rule of limitation of liability, the other making exceptions in favor of passengers." *The Annie Faxon*, Wash.1896, 75 F. 312, 21 C.C.A. 366.

This section does not take claims for personal injury or loss of baggage out of the limited liability statute, section 181 et seq. of this title and it merely imposes a further condition, of the limitation of liability in those classes of cases, that the injury did not happen by reason of any of the causes mentioned in the section. *In re Long Island, North Shore Passenger & Freight Transp. Co.*, D.C.N.Y.1881, 5 F. 599.

23. — Contract

Where box on face of steamship ticket, where signature for the carrier appeared,

referred directly to terms and conditions which were printed on the ticket's face and which were carried back into the box itself, provision of ticket requiring suits for injuries to be brought within a year was part of the contract of carriage and binding on passenger. *Foster v. Cunard White Star, C.C.A.N.Y.1941*, 121 F.2d 12.

Where the attention of a steamship passenger was not called to language of her baggage check and the company's tariff schedule limiting damages for failure to make due delivery of a trunk, the value of which was not declared to be more than \$100, such limitation was not a part of the contract of carriage under the federal statute, in the absence of evidence that the company had adopted such regulation, though it would be presumed it had complied with the statute by filing a tariff schedule. *Vanderberg v. Detroit & C. Nav. Co.*, 1921, 186 N.W. 477, 216 Mich. 682.

24. — Notice or knowledge

Where brother purchased steamship ticket for sister as well as for himself and had it in his possession 17 days before voyage commenced, sister was charged with notice of limitations in ticket requiring suits for injuries to be brought within a year. *Foster v. Cunard White Star, C.C.A.N.Y.1941*, 121 F.2d 12.

Where intent of steamship ticket was to emphasize necessity of compliance with requirement for suit within a year and of notice of claim within 40 days, rather than to make one dependent on the other, illegality of the provision for notice did not invalidate the provision for suit within a year. *Id.*

Where steamship passenger did not sign ticket until after cruise began, stipulation on ticket that notice of any claim against carrier was required to be lodged with carrier at certain place, which was not incorporated into body of contract but appeared under conditions on back of ticket, was not binding on passenger as respects right to maintain libel for injuries against steamship, in absence of knowledge by passenger of such conditions before cruise began. *The Kungsholm, C.C.A.N.Y.1936*, 86 F.2d 703.

Recovery was not barred by immigrant's noncompliance with fine type clause of ticket, which she could not read, limiting time for notice of claim for injuries. *Osipuk v. Oceanic Steam Nav. Co.*, D.C.N.Y.1962, 58 F.2d 673.

Where time for filing of passengers' claims against steamship was fixed on petition for limitation which order was published and it appeared that if new claimants were allowed to file, each of 577 previous claimants would have to be notified and it appeared that late claimants had some actual knowledge of limitation on time for filing claims motion to file late claims "nunc pro tunc" was denied. "The Navemar", D.C.N.Y.1942, 49 F.Supp. 68.

A stipulation in a contract for transportation of a passenger requiring written notice of injury within 40 days after debarkation as condition of suit for injuries was valid, and applied, though injuries were aggravated after debarkation. *Murray v. Cunard S. S. Co.*, 1923, 139 N.E. 226, 235 N.Y. 182.

A steamship ticket which described thereon in large type as a passage contract ticket issued and accepted on the terms and conditions therein stated, was a contract and not a mere token or voucher, and the passenger was bound by a condition stated on its face requiring notice of injury within specified period, though he did not read it, and though he surrendered it when he boarded the ship. *Id.*

25. Burden of proof

In action by passenger for personal injuries allegedly sustained as result of loose tread on stair of vessel, burden rested upon plaintiff to show by fair preponderance of the evidence that the injury was sustained as alleged. *Le Doux v. U. S. Lines Co.*, D.C.N.Y.1940, 31 F.Supp. 608.

26. Evidence—Admissibility

In suit for injuries allegedly sustained by passenger in a fall on respondent's steamship, proof of injury sustained by libellant in a previous fall was admissible only to affect the extent of injuries received on respondent's vessel. *Gardner v. Panama Canal Co.*, D.C.Canal Zone 1953, 115 F.Supp. 687.

In libel based upon alleged negligence in the operation of a steamship, the findings of steamboat inspectors that the captain of the steamboat was guilty of negligence was inadmissible, being merely the conclusion of the inspectors. *Morrison v. Coombs*, D.C.Me.1933, 24 F.Supp. 366.

In action for personal injuries sustained by the falling of a piece of timber on a passenger, testimony that the people generally on the boat had been warned not to go to that portion of

boat where accident occurred was inadmissible, since the warning to the passengers generally constituted no warning to plaintiff. *Tennessee River Nav. Co. v. Woodward*, 1920, 88 So. 364, 18 Ala.App. 34.

In an action for injuries received in boarding a boat, on the ground of negligence in requiring passengers to pass over a deck which was waxed and polished for dancing purposes and not provided with a rubber mat or antislipping device, evidence of the nonoccurrence of a similar accident is admissible for the purpose of showing defendant not guilty of negligence in not apprehending the accident, where the danger was not obvious. *Cleveland & Buffalo Transit Co. v. Roderick*, 1918, 10 Ohio App. 119.

27. — Weight and sufficiency

An injured passenger, in order to recover under this section for an injury caused by the explosion of a boiler which had not been inspected, need not prove that there were defects in the boiler which would necessarily have been detected if an inspection had been made before using it. *The Annie Faxon*, Wash.1896, 75 F. 312, 21 C.C.A. 366.

The explosion of a boiler is *prima facie* evidence of negligence; and when the evidence does not disclose any latent defect as the cause of the explosion, but there is evidence tending to show that the engineers were careless and negligent, the libellant is entitled to decree for personal injuries sustained. *Dunlap v. The Steamboat Reliance*, C.C.Ga.1880, 2 F. 249.

In suit to recover damages for personal injuries, evidence established that libellant sustained injury as a result of a fall while a passenger on respondent's steamship. *Gardner v. Panama Canal Co.*, D.C.Canal Zone 1953, 115 F.Supp. 687.

Evidence established that bathroom of passenger vessel was adequate and safe in every respect, including proper distribution of adequate hand grabs for manual support and disclosed no negligence in design or equipment of bathroom which would render owner and operator of vessel liable for injuries sustained by passenger when vessel gave a very slight lurch and passenger, attempting to flush toilet, fell over coaming into shower basin. *Id.*

In action by passenger for injuries, evidence was insufficient to show that fall on stairway of vessel was caused by loose tread as alleged. *Le Doux v. U. S. Lines Co.*, D.C.N.Y.1940, 31 F.Supp. 608.

Act July 7, 1838, § 13, made the fact of the injurious escape of steam full prima facie proof of negligence to charge the defendant in all actions against proprietors of steamboats for injuries occasioned by injurious escape of steam. *The Highland Light*, C.C.Md.1867, Fed. Cas.No.6,477.

Verdict for passenger for injuries sustained in fall from steep unguarded gangplank was sustained by evidence. *Mawson v. Eagle Harbor Transp. Co.*, 1923, 268 P. 595, 148 Wash. 258.

In action for injuries sustained while traveling as a passenger on a steamship in which defendant denied being the owner or operator of such vessel at the time of the accident, plaintiff's evidence was insufficient for submission of case to jury. *Deniff v. Charles B. McCormick & Co.*, 1922, 210 P. 703, 105 Or. 697.

28. Instructions

In passenger's action against steamboat company for injuries caused by explosion of firecracker thrown by another passenger, instruction that positive testimony of defendant steamboat company

as to precautions taken was not contradicted by negative testimony of persons who denied seeing and hearing things and acts relied on as precautions, although number of witnesses were in position to have seen and heard, was properly denied. *Streckfus Steamers v. Shuttleworth*, C.C.A.W.Va.1936, 86 F.2d 327, rehearing denied 86 F.2d 1013, certiorari denied 57 S.Ct. 922, 301 U.S. 694, 81 L.Ed. 1350.

In passenger's action against steamboat company for injuries caused by explosion of firecracker thrown by another passenger, comment of trial judge, in excluding evidence, which was mere statement of what must have been obvious to everyone, was not error, where statement was promptly withdrawn and jury were instructed to disregard comment. *Id.*

29. Damages

Vessel owners are only liable in actual and not in punitive damages for the torts of the master involving a breach of a passenger's contract. *McGuire v. The Golden Gate*, C.C.Cal.1856, Fed.Cas. No.8,815.

§ 492. Copies of laws governing marine inspection to be kept on passenger vessels

Every master or commander of any steam vessel carrying passengers shall keep on board of such vessel at least two copies of the provisions of title 52 of the Revised Statutes, to be furnished to him by the Commandant of the Coast Guard; and if the master or commander neglects or refuses to do so, or shall unreasonably refuse to exhibit a copy of the same to any passenger who asks for it, he shall be liable to a penalty of \$20. R.S. § 4494; Feb. 14, 1903, c. 552, § 10, 32 Stat. 829; Mar. 4, 1913, c. 141, § 1, 37 Stat. 736; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Derivation. Act Feb. 28, 1871, c. 100, § 50, 16 Stat. 455.

References in Text. For distribution of title 52, sections 4399-4500, of the Revised Statutes, referred to in the text, of which this section is a part, see note under section 170 of this title.

Codification. Upon incorporation into the Code, the words "Secretary of Commerce" were substituted for "Secretary of the Treasury" to conform to Acts Feb. 14, 1903 and Mar. 4, 1913. See note under section 467 of this title.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government

Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and § of Title 14, Coast Guard.

"Commandant of the Coast Guard" was substituted for "Secretary of Commerce" on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Notes of Decisions

1. Posting

Upon similar provisions in the Act of July 4, 1864, providing that the Secretary of the Treasury should cause to be prepared a synopsis of the laws relating to the carriage of passengers and give copies to the owner or master applying for them, who should place and frame them in conspicuous places, having on board only one copy was not a compliance, and the duty was upon the master

or owner to apply for copies to the Secretary of the Treasury if he could not obtain them elsewhere. *The Lewellen*, Ind. 1868, 4 Biss. 156, 15 Fed. Cas. No. 8,307.

A proceeding in rem was the proper mode of prosecution for the violation of Act July 4, 1864, § 8, in neglecting to post up in a conspicuous place in a steamer synopses of the laws relating to the carriage of passengers. *Id.*

§ 493. Name of steamer exhibited

Every steam vessel of the United States, in addition to having her name painted on her stern, shall have the same conspicuously placed in distinct, plain letters of not less than six inches in length, on each outer side of the pilot house, if it has such, and in case the vessel has side wheels, also on the outer side of each wheelhouse; and if any such steamboat be found without having her name placed as required, she shall be subject to the same penalty and forfeiture as provided by law in the case of a vessel of the United States found without having her name, and the name of the port to which she belongs, painted on her stern. R.S. § 4495.

Historical Note

Derivation. Act Feb. 28, 1871, c. 100, § 50, 16 Stat. 455.

Cross References

Painting or marking names of vessels on stern, see section 46 of this title.

§ 494. Duties of customs officers

All collectors, or other chief officers of the customs, and all inspectors within the several districts, shall enforce the provisions of title 52 of the Revised Statutes against all steamers arriving and departing. R.S. § 4496.

Historical Note

Derivation. Act Feb. 28, 1871, c. 100, § 30, 16 Stat. 450.

References in Text. For distribution of title 52, sections 4399-4500, of the Revised Statutes, referred to in the text,

of which this section is a part, see note under section 170 of this title.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agen-

cies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 28, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The collectors and chief officers of the customs, referred to in this section, are officers in the Treasury Department, and the Coast Guard, to the Commandant of which the inspection functions were transferred by 1946 Reorg. Plan No. 3 (see note below), is generally a service in the Treasury

Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

The offices of local inspectors were abolished and their inspection functions transferred to the Commandant of the Coast Guard by 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Cross References

Section as applicable to foreign private steam vessels, see section 362 of this title.

Notes of Decisions

Generally 1

Seizure of vessels 3

Withholding clearance 2

1. Generally

It is the duty of the customs officers to enforce the provisions of Title 52 R.S. (incorporated in part in this chapter) pertaining to the regulation of steam vessels as well as to enforce the customs revenue laws. (1923) 34 Op. Atty. Gen. 244.

The duty of enforcing the law limiting the number of passengers a steamer may carry rested equally on officers of the customs and on steamboat inspectors, and the Secretary of Commerce and Labor, the Steamboat Inspection Service having been transferred from the Treasury Department to his department, had the authority to appoint additional in-

spectors at certain ports and to assign them to the duty in question, but he was not authorized to assume entire control of the enforcement of this provision of the law. 1907, 26 Op. Atty. Gen. 272.

2. Withholding clearance

Where a passenger vessel sought to be cleared, carries merchandise which it is unlawful to transport, or has not complied with all laws relating to safety of passengers, the collector of customs must withhold clearance until the law has been complied with. 1923, 34 Op. Atty. Gen. 244.

3. Seizure of vessels

The absence of authority to seize a vessel not forfeited shows an intent to withhold that power in cases covered by this section. The Steamboat Joshua Leviness, D.C.N.Y. 1878, 9 Ben. 339, 13 Fed. Cas. No. 7,549.

§ 495. Penalty for omission of duty by customs officers

Every collector, or other chief officer of the customs, or inspector, who negligently or intentionally omits any duty under section 494 of this title, shall be liable to removal from office, and to a penalty of \$100 for each offense, to be sued for in an action of debt. R.S. § 4497.

Historical Note

Derivation. Act Feb. 28, 1871, c. 100, § 30, 16 Stat. 450.

Transfer of Functions. All functions of all officers of the Department of the

Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury,

with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The collectors and chief officers of the customs, referred to in this section, are officers in the Treasury Department, and the Coast Guard, to the Commandant of which the inspection functions were transferred by 1946 Reorg. Plan No. 3 (see note below), is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the

Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

The offices of local inspectors were abolished and their inspection functions transferred to the Commandant of the Coast Guard by 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Cross References

Section as applicable to foreign private steam vessels, see section 362 of this title.

§ 496. Registry or enrollment denied to vessels not complying with law

A register, enrollment, or license shall not be granted, or other papers be issued by any collector or other chief officer of customs to any vessel subject by law to inspection under title 52 of the Revised Statutes until all the provisions of such title applicable to such vessel have been fully complied with and until the copy of the certificate of inspection required by such title for such vessel has been filed with said collector or other chief officer of customs: *Provided*, That the license granted to any vessel, if presented to any collector of customs at any time within thirty calendar days prior to the date of expiration shown thereon, may be renewed by the endorsement by the collector of customs for a period of one year from the date of expiration shown on the license, if there be on file in the office of the collector at that time a copy of the certificate of inspection required by title 52 of the Revised Statutes, which is in force on the date renewal is made. R.S. § 4498; Mar. 3, 1905, c. 1457, § 9, 33 Stat. 1032; Mar. 4, 1915, c. 184, § 5, 38 Stat. 1218; June 2, 1939, c. 168, 53 Stat. 798.

Historical Note

Derivation. Act Feb. 28, 1871, c. 100, § 1, 16 Stat. 440.

References in Text. For distribution of title 52, sections 4399-4500, of the Revised Statutes, referred to in the text, of which this section is a part, see note under section 170 of this title.

Codification. R.S. § 4498, as enacted in the Revised Statutes, was as follows: "No license, register, or enrollment shall be granted, nor any other papers be

issued, by any collector or other chief officer of the customs, to any vessel propelled in whole or in part by steam, until he shall have satisfactory evidence that all the provisions of this Title have been fully complied with."

It was amended by Act Mar. 3, 1905, to read as follows: "A register, enrollment or license shall not be granted or other papers be issued by any collector or other chief officer of customs

to any vessel subject by law to inspection under this title until all the provisions of this title applicable to such vessel have been fully complied with and until the certificate of inspection required by this title for such vessel has been filed with said collector."

It was again amended by Act Mar. 4, 1915, to require filing of copy of certificate of inspection and added provision for such filing with chief officer of customs.

1939 Amendment. Act June 2, 1939, amended section by adding proviso relating to renewal of license.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such

officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1230, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The collectors and chief officers of the customs, referred to in this section, are officers in the Treasury Department, and the Coast Guard, to the Commandant of which the inspection functions were transferred by 1946 Reorg. Plan No. 3 (see note below), is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

§ 497. Penalty for failure to comply with provisions

If any vessel propelled in whole or in part by steam be navigated without complying with the terms of title 52 of the Revised Statutes, the owner shall be liable to the United States in a penalty of \$500 for each offense, one-half for the use of the informer, for which sum the vessel so navigated shall be liable, and may be seized and proceeded against by way of libel in any district court of the United States having jurisdiction of the offense. Persons or corporations chartering or engaging or contracting for the use of vessels subject to title 52 of the Revised Statutes under such terms and conditions that they have full and exclusive control of the management and operation of such vessels, shall be subject to the same penalties for violations of the provisions of title 52 of the Revised Statutes as are now imposed upon owners of vessels thereunder, and in such cases the owners shall not be liable to such penalties for such violations by such charterers or contractors. R.S. § 4499; Mar. 3, 1905, c. 1454, § 4, 33 Stat. 1025.

Historical Note

Derivation. Act Feb. 23, 1871, c. 100, § 1, 16 Stat. 440.

References in Text. For distribution of title 52, sections 4399-4500, of the Revised Statutes, referred to in the text,

of which this section is a part, see note under section 170 of this title.

Codification. R.S. § 4499, as enacted in the Revised Statutes, contained only the first sentence. The second sentence was added by Act Mar. 3, 1905.

Cross References

Section as applicable to foreign private steam vessels, see section 362 of this title.

Notes of Decisions

Generally 1
 Burden of proof 11
 Carrying passengers 4
 Evidence 12
 Form of remedy 7
 Jurisdiction 9
 Libel 10
 Liens 14
 Nature and form of remedy 7
 Navigation 3
 Number of passengers 5
 Remission of penalty or forfeiture 15
 Seizure generally 8
 Sufficiency of compliance 6
 Vessels within section 2
 Witnesses 13

1. Generally

The penalty prescribed by this section is incurred by any violation, although some other penalty may be prescribed by the section or provision violated. *The Idaho* (D.C.Or.1886) 29 F. 187, 188.

2. Vessels within section

This section applies to a steam craft used to transport the owner and his superintendent across the Delaware, and occasionally his workmen, to the number of nine or ten. *Hartman v. Du Pont* (Pa.1886) 6 S.Ct. 1188, 118 U.S. 223, 30 L.Ed. 205.

This section is not made applicable to vessels propelled by gas, fluid, naphtha, or electric motors by section 520 of this title. *The Ben R.* (Ky.1904) 134 F. 784, 67 C.C.A. 290.

A libel for the offense of using a freight boat for the carrying of passengers without having been inspected as a passenger steamer, and obtaining a certificate specifying the number of passengers she can carry, is properly brought under this section. *U. S. v. The Frank Sylvia* (D.C. Cal.1888) 37 F. 155.

The steam vessels belonging to the state of Maryland, and used by its officers in the enforcement of the state fishery laws in the Chesapeake Bay, are liable to the penalties prescribed for noncompliance with the provisions of the United States law regulating steam vessels. *The Oyster Police Steamers of Maryland* (D.C. Md.1887) 31 F. 763, affirmed 35 F. 826.

A vessel engaged in carrying freight between ports in different states, which on one occasion carried a load of passengers for purposes of a prize fight between ports in the same state, was not

subject to a penalty for failure to comply with Act Aug. 30, 1852, §§ 5, 9, requiring life preservers and inspection of boiler. *The Thomas Swan* (D.C.N.Y.1872) Fed.Cas.No. 13,981.

A steam vessel usually employed as a towboat, which transported passengers from Buffalo to Canada, and back, for pay, was liable to the penalty for transporting passengers without a license. *U. S. v. The Echo* (C.C.N.Y.1860) Fed. Cas.No. 15,021.

The steamship *Europa*, a private vessel of Italian nationality, which was engaged in carrying passengers upon a regularly established line between the ports of the United States and European ports, and sailed from the port of New York with a certificate of inspection, but arrived back at New York more than 30 days after the expiration of such certificate, did not thereby violate any of the provisions of title 52, R.S. (incorporated in part in this section) for the reason that foreign vessels are subject to inspection only when carrying passengers from the United States. (1911) 29 Op.Atty.Gen. 19.

3. Navigation

It is a criminal offense, punishable by indictment, to operate a gasoline launch of over 15 tons burden in the carrying of passengers or freight for hire without a licensed engineer. *U. S. v. Nash*, D.C. Ky.1901, 111 F. 525.

The penalty provided by this section is not confined to matters of technical "navigation," such as equipment and furnishing of vessels, but includes all the topics embraced in the title, among them the provision forbidding the carrying of more than a certain number of passengers. *The Idaho* (D.C.Or.1886) 29 F. 187.

A voyage from the place where the vessel is constructed to another place, by direction of the inspectors, to enable her to be inspected, is not a violation of the navigation laws. *The Joshua Leviness*, D.C.N.Y.1873, Fed.Cas.No. 7,549.

4. Carrying passengers

Where the wife and neighbors of a tug owner go upon the tug during a trial trip, merely to witness the test of her machinery, they are not passengers, within the meaning of the statute requiring passenger boats to be inspected and licensed and the owner is not liable to the fine imposed by this section. *U. S. v. Guess* (D.C.La.1891) 48 F. 537.

A chartered vessel, carrying charterer's cargo for lump sum charter hire under bareboat charter providing for charterer's payment of vessel rental regardless of whether vessel carried any cargo and prohibiting carriage of cargo belonging to others than charterer, was not engaged in carriage of freight or passengers for hire at time of alleged accrual of penalties under section 404 of this title for failure to have certificate of inspection on board when vessel left port, and hence was not liable to United States for such penalties. *U. S. v. The Reefer King*, D.C.Wash.1950, 90 F.Supp. 236.

5. Number of passengers

The penalty prescribed for a failure to comply with any of the provisions of R. S. tit. 52 (incorporated in part in this chapter), in navigating a steam vessel, is incurred by any such failure, although some other penalty may be prescribed by the section or provision thus violated, and therefore this section is to be read as if the penalty therein was specifically prescribed for the violation of the first clause of section 452 of this title, limiting the number of passengers to be carried on such vessel. *The Idaho* (D.C.Or.1886) 29 F. 187.

This section does not seem to impose a penalty for taking an excessive number of passengers. *Pollock v. The Sea Bird* (D.C.N.Y.1880) 3 F. 573.

6. Sufficiency of compliance

A compliance with the statutes and the requirements of the inspectors must be deemed, at least prima facie, a discharge of the legal obligations of the owners as respects the specific subjects covered. *The Garden City* (D.C.N.Y.1886) 28 F. 768.

7. Nature and form of remedy

A proceeding in rem by the United States against a vessel under this section is one in admiralty, and not a criminal proceeding, and a decree dismissing the libel is appealable. *The Ben R.* (Ky. 1904) 134 F. 784, 67 C.C.A. 290.

An action of debt, and not an information in rem, is the proper remedy to recover a penalty for violation of section 465 of this title, forbidding the carrying of burning or explosive fluids on passenger steamers. *U. S. v. The C. B. Church* (C.C.La.1872) Fed.Cas.No.14,762. See, also, *The James D. Parker* (D.C.Mich.) Fed.Cas.No. 7,193.

A prosecution for a penalty under Act July 4, 1864, § 3, regulating the carriage

of passengers on steamships, etc., had to be by action of debt, and not a libel in rem. *The Nashville* (D.C.Ind.1868) Fed. Cas.No. 10,023.

The penalties provided for by the Passenger Act of 1848 could only have been recovered by an action of debt on the common-law side of the court. *U. S. v. The Neptune* (D.C.Md.1854) Fed.Cas.No. 15,865.

The United States might have sued in debt to recover the penalty given by Act Aug. 30, 1852, notwithstanding section 41, which provided that all penalties "may be recovered in an action of debt by any person who will sue therefor." *U. S. v. Bougher* (C.C.Ohio 1854) Fed.Cas.No. 14,627.

8. Seizure generally

In a proceeding against a vessel under this section for the penalty for violation of the laws relating to inspection, an executive seizure prior to the seizure under the libel is not necessary. *The Joshua Leviness* (D.C.N.Y.1878) Fed.Cas. No. 7,549.

9. Jurisdiction

The district court, has no jurisdiction until there has been a seizure of the vessel. *U. S. v. The Frank Sylvia* (C.C. Cal.1891) 45 F. 641. See, also, *The Tug May* (C.C.Wis.1874) 6 Biss. 243, 16 Fed. Cas.No. 9,330.

In a case of seizure, the place of seizure, and not that of the commission of the act on account of which the seizure is made, determines the jurisdiction, and the clause that vessels offending in certain ways "may be seized and proceeded against by way of libel in any district court of the United States having jurisdiction of the offense" does not change this rule, and the court in whose district a seizure is made acquiring thereby jurisdiction of the subject-matter or cause of suit. *The Idaho* (D.C.Or.1886) 29 F. 187.

It is not to be supposed that the general rule and test of jurisdiction of the district courts in cases of penalties and seizures as prescribed by section 1355 of Title 28 was intended to be changed, and a peculiar and impracticable test substituted by this section. *Id.*

10. Libel

Departing from port without a licensed mate in violation of section 222 of this title, was held to make the owner liable under this section notwithstanding that the libel of information did not point out

the particular section of the statute under which the penalty sought in the libel was claimed. *U. S. v. Independent Packet Co.*, Mo.1915, 226 F. 721, 141 C.C.A. 477, rehearing denied 228 F. 673, 143 C.C. A. 195.

When a penalty is demanded against a steam vessel upon grounds not set out in the libel, the demand will be ignored. *The Pope Catlin* (D.C.Ga.1887) 31 F. 408.

A libel of information against a steam vessel, to recover the penalty for not being inspected according to the Act of Congress, to provide for the better security of life on board of vessels propelled in whole or in part by steam (incorporated in part in this chapter), cannot be sustained if a subsisting seizure of the vessel at the time the libel is brought is not alleged, and which is to be proven at the hearing. *The Tug May*, D.C.Wis.1873, 5 Biss. 449, 16 Fed.Cas.No. 9,329. See, also, *The Tug May*, C.C.Wis. 1874) 6 Biss. 243, 16 Fed.Cas.No. 9,330.

11. Burden of proof

In proceedings to recover a penalty for violations of the navigation laws, the burden of proof is on the prosecution. *The Pope Catlin* (D.C.Ga.1887) 31 F. 408.

12. Evidence

Evidence was insufficient to sustain a libel by the United States against a steamer under this section to recover the penalty for carrying more passengers than allowed by the vessel's inspection certificate. *The Seneca*, N.J.1916, 234 F. 312, 148 C.C.A. 214.

The United States, filing libel to recover penalties for vessel's failure to have certificate of inspection on board when it left port, must establish that vessel was engaged in carriage of freight or passengers for hire within section 404 of this title respecting vessel inspection when alleged penalties accrued. *U. S. v. The Reefer King*, D.C.Wash.1950, 90 F. Supp. 236.

13. Witnesses

An inspector, under Act Aug. 30, 1852, although he might be the informer, was not entitled to any part of the penalty, and was a competent witness for the prosecution. *U. S. v. The Thomas Swan*, D.C.S.C.1856, Fed.Cas.No. 16,480.

14. Liens

The lien of seamen for wages takes priority over claims for penalties incurred by the vessel for failure to keep posted

the certificate of inspection. *The Jennie Hayes*, D.C.Iowa 1889, 37 F. 373.

The United States had no lien for the penalty for violation of Act July 7, 1838, providing for the security of lives of passengers on steam vessels, whereby it might overreach liens of materialmen under the Missouri statute. *U. S. v. The Laurel*, D.C.Mo.1852, Fed.Cas.No. 15,569.

Act July 7, 1838, declared no forfeiture of the vessel, and created no lien, express or implied, for the penalty. *Id.*

Provision of this section that "for which sum the vessel so navigated shall be liable, and may be seized and proceeded against by way of libel" gives rise to a lien in favor of the United States against the offending vessel for the penalty incurred for violation of section 465 of this title, and authorizes collector to withhold clearance which would probably defeat the lien. 1923, 34 Op.Atty. Gen. 244.

15. Remission of penalty or forfeiture

The Secretary of the Treasury, and not the President, had power to remit the forfeiture of a vessel incurred by violation of the second section of Act July 7, 1838, c. 191, for the better security of the lives of passengers on steam vessels. 1864, 11 Op.Atty.Gen. 122.

Where Act Mar. 3, 1855, c. 213 [R.S. § 4252, et seq. (repealed)] regulating the carriage of passengers in steamships and other vessels, and imposing penalties and punishment for contravention, was made applicable to ships abroad for sixty days in Europe, and six months in other parts of the world, and required notice of the Act to be given in all foreign ports through the Department of State, where such notice had failed to be given in a foreign port, and the owner or master of a vessel had thus unconsciously offended, it was a proper case for remission of forfeiture and for pardon of the master. 1855, 7 Op.Atty.Gen. 489.

In cases of mere forfeiture or other penalties accruing to the Treasury under the Acts of Congress relative to the transportation of passengers, the Secretary of the Treasury may remit, as in similar cases arising under the revenue laws. 1854, 6 Op.Atty.Gen. 488.

This does not exclude the general power of the President to pardon and where, under the same passenger laws, personal punishment is inflicted, the case can be reached only through the pardoning power of the President. *Id.*

§ 498. Penalty in cases not provided for

The penalty for the violation of any provision of title 52 of the Revised Statutes, not otherwise especially provided for, shall be a fine of \$500, recoverable one-half for the use of the informer. R.S. § 4500.

Historical Note

Derivation. Act Feb. 23, 1871, c. 100, § 68, 16 Stat. 458.

References in Text. For distribution of title 52, sections 4399-4500, of the Re-

vised Statutes, referred to in the text, of which this section is a part, see note under section 170 of this title.

Cross References

Section as applicable to foreign private steam vessels, see section 362 of this title.

Notes of Decisions**Jurisdiction 2****Vessels within section 1****1. Vessels within section**

This section is applicable to private foreign steam vessels which carry passengers. *La Bourgogne*, D.C.N.Y.1900, 104 F. 823.

2. Jurisdiction

A ferryboat plying between two ports in the same state upon a navigable river is within the admiralty jurisdiction of the United States, and her owners may therefore be proceeded against in per-

sonam, under this section, for carrying passengers on an excursion in excess of the number allowed by her permit. *U. S. v. Burlington & H. C. Ferry Co.*, D.C. Iowa 1884, 21 F. 381.

When a steam ferryboat, contrary to the provision of section 453 of this title, carries passengers on an excursion, largely in excess of the number allowed by her permit, and fails to carry the required number of life-preservers, she is guilty of a marine tort, and a United States district court has jurisdiction of a libel in personam against her owners and master to recover the penalty prescribed by this section. *Id.*

CHAPTER 16.—REGULATION OF MOTOR BOATS

SUBCHAPTER I. GENERAL PROVISIONS

Sec.

511–520. Repealed.

521, 522. Omitted.

SUBCHAPTER II. MOTORBOAT ACT OF 1940

526. “Motorboat” defined; inspection.

526a. Classification of motorboats.

526b. Lights.

526c. Whistles or other sound-producing appliances.

526d. Bells.

526e. Life preservers, etc.

526f. Motorboats and small craft carrying passengers for hire; operators’ licenses.

526g. Fire extinguishers.

526h. Exemption of racing outboard motorboats from requirement of sound and fire extinguishing equipment.

526i. Carburetor flame arrestors and backfire traps.

526j. Ventilation of engine and fuel compartment bilges on open vessels using volatile liquids as fuel.

526k. Carrying copies of pilot rules.

526l. Reckless or negligent operation of vessels; prohibition.

526m. Same; penalty.

526n. Same; arrest; procedure after arrest.

526o. Violations generally; penalties.

526p. Regulations; remission or mitigation of fines, penalties, etc.

526q. Application of other laws.

526r. Laws unaffected.

526s. Authorization of appropriations.

526t. Necessity of keeping on board certificate of award of number.

SUBCHAPTER I. GENERAL PROVISIONS

§§ 511–519. Repealed. Apr. 25, 1940, c. 155, § 19, 54 Stat. 167.

Historical Note

Sections, Act June 9, 1910, c. 268, §§ 1–9, 36 Stat. 462, 463, prescribed certain regulations and penalties in connection with the operation of motorboats, and are now covered by sections 526–526t of this title.

Effective Date of Repeal. The repeal of sections 515–517 of this title became effective one year from Apr. 25, 1940.

§ 520. Repealed. May 10, 1956, c. 258, § 6(a), 70 Stat. 153.

Historical Note

Section, Act Jan. 18, 1897, c. 61, 29 Stat. 489, related to regulations as to certain vessels propelled by gas, fluid, naphtha, or electric motors, and is now covered generally by sections 390-390g of this title.

Effective Date of Repeal. Repeal of section as effective on June 1, 1958, or

on the first day of the sixth month following the prescription of rules and regulations by the Secretary under section 390b of this title, whichever is later, see note set out under section 390 of this title.

§§ 521, 522. Omitted

Historical Note

Codification. Section 521, Act Aug. 7, 1939, c. 558, § 1, 53 Stat. 1257, omitted from the Code, related to exemption of outboard motorboats for racing from provisions of sections 514 and 516 of this title which have been repealed. See section 526h of this title.

Section 522, Act Aug. 7, 1939, c. 558, § 2, 53 Stat. 1257, which related to exempting motorboats from carrying copies of pilot rules, was omitted as superseded by section 526k of this title.

SUBCHAPTER II. MOTORBOAT ACT OF 1940

§ 526. "Motorboat" defined; inspection

The word "motorboat" where used in this subchapter shall include every vessel propelled by machinery and not more than sixty-five feet in length except tugboats and towboats propelled by steam. The length shall be measured from end to end over the deck, excluding sheer: *Provided*, That the engine, boiler, or other operating machinery shall be subject to inspection by the Coast Guard, and to its approval of the design thereof, on all said motorboats, which are more than forty feet in length, and which are propelled by machinery driven by steam. Apr. 25, 1940, c. 155, § 1, 54 Stat. 163; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but

such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

References to local inspectors of steam vessels were changed to Coast Guard on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Notes of Decisions

Inspection 4
Motorboats 3
Nature and scope 1
Repeals 2

1. Nature and scope

This subchapter was passed as a commerce measure under U.S.C.A.Const. Art. 1, § 8, cl. 3 and not under U.S.C.A.Const. Art. 3, § 2, cl. 1 and, hence, was not limited in its application to bodies of water connected with the sea, as against contention that it was passed under the admiralty and maritime jurisdiction clause. *Davis v. U. S.*, C.A.Cal.1950, 185 F.2d 933, certiorari denied 71 S.Ct. 495, 340 U.S. 932, 95 L.Ed. 673.

2. Repeals

Former sections 511-519 of this title repealed section 404 of this title, in so far as that section required inspection of small steam vessels of the motor-boat class, but they did not repeal prior laws relating to the inspection of motor boats propelled otherwise than by steam. 1911, 29 Op.Att'y.Gen. 112.

3. Motorboats

A vessel 87 feet long, propelled partly by sail and partly by gasoline engines, was not a motor boat, within former section 511 of this title and was not governed by former section 513 of this title, providing that motorboats, when propelled by sail and machinery, need not carry the white lights required by said former section. *The Alice M. Guthrie*, D.C.Va.1919, 257 F. 472.

Vessel only 62.2 feet in length and propelled by a Deisel engine was a "motorboat" within this section. *National Grocery Co. v. Olsen*, 1940, 108 P.2d 320, 6 Wash.2d 491.

4. Inspection

The Steamboat Inspection Laws, section 404 of this title, are not applicable to motorboats as defined in this section. *Bryant v. Rucker*, D.C.Ala.1953, 111 F. Supp. 309.

The engine, boiler, or other operating machinery of a steam motorboat more than 40 feet in length was subject to inspection by the local inspectors of steam vessels, and the design thereof was subject to their approval, by the proviso to former section 511 of this title. 1911, 29 Op.Att'y.Gen. 112.

§ 526a. Classification of motorboats

Motorboats subject to the provisions of this subchapter shall be divided into four classes as follows:

Class A. Less than sixteen feet in length.

Class 1. Sixteen feet or over and less than twenty-six feet in length.

Class 2. Twenty-six feet or over and less than forty feet in length.

Class 3. Forty feet or over and not more than sixty-five feet in length. Apr. 25, 1940, c. 155, § 2, 54 Stat. 163.

§ 526b. Lights

Every motorboat in all weathers from sunset to sunrise shall carry and exhibit the following lights when under way, and during such time no other lights which may be mistaken for those prescribed shall be exhibited:

(a) Every motorboat of Classes A and 1 of section 526a of this title shall carry the following lights:

First. A bright white light aft to show all around the horizon.

Second. A combined lantern in the fore part of the vessel and lower than the white light aft, showing green to starboard and red to port, so fixed as to throw the light from right ahead to two points abaft the beam on their respective sides.

(b) Every motorboat of classes 2 and 3 of section 526a of this title shall carry the following lights:

First. A bright white light in the fore part of the vessel as near the stem as practicable, so constructed as to show an unbroken light over an arc of the horizon of twenty points of the compass, so fixed as to throw the light ten points on each side of the vessel; namely, from right ahead to two points abaft the beam on either side.

Second. A bright white light aft to show all around the horizon and higher than the white light forward.

Third. On the starboard side a green light so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side. On the port side a red light so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the port side. The said side lights shall be fitted with inboard screens of sufficient height so set as to prevent these lights from being seen across the bow.

(c) Motorboats of classes A and 1 of section 526a of this title when propelled by sail alone shall carry the combined lantern, but not the white light aft, prescribed by this section. Motorboats of classes 2 and 3 of section 526a of this title, when so propelled, shall carry the colored side lights, suitably screened, but not the white lights, prescribed by this section. Motorboats of all classes, when so propelled, shall carry, ready at hand, a lantern or flashlight showing a white light which shall be exhibited in sufficient time to avert collision.

(d) Every white light prescribed by this section shall be of such character as to be visible at a distance of at least two miles. Every colored light prescribed by this section shall be of such character as to be visible at a distance of at least one mile. The word "visible" in this subchapter when applied to lights, shall mean visible on a dark night with clear atmosphere.

(e) When propelled by sail and machinery any motorboat shall carry the lights required by this section for a motor boat propelled by machinery only.

(f) Any motor boat may carry and exhibit the lights required by the Regulations for Preventing Collisions at Sea, 1948, Act of October 11, 1951 (65 Stat. 406-420), as amended, in lieu of the lights required by this section. Apr. 25, 1940, c. 155, § 3, 54 Stat. 164; June 4, 1956, c. 353, §§ 1, 2, 70 Stat. 228.

Historical Note

References in Text. Regulations for Preventing Collisions at Sea, 1948, Act of October 11, 1951, referred to in subsec. (f), are classified to sections 143-147d of Title 33, Navigation and Navigable Waters, and to sections 177(a) and 560(a) (6) of Title 49, Transportation.

1956 Amendment. Subsec. (c) amended by Act June 4, 1956, § 1, by requiring motorboats of classes A and 1, when

propelled by sail alone, to carry the combined lantern but not the white light aft.

Subsecs. (e) and (f) added by Act June 4, 1956, § 2.

Legislative History: For legislative history and purpose of Act June 4, 1956, see 1956 U.S.Code Cong. and Adm.News, p. 2654.

Notes of Decisions

Failure to comply 6
Location and position 2
Stopping vessels 4
Sufficiency 3
Vessels within section 1
Violation as cause of collision 5

1. Vessels within section

Former section 513 of this title, authorizing imposition of penalties against motorboats for running without lights, was inapplicable to motorboat over 65 feet long. *The Pueblos*, C.C.A.Conn. 1935, 77 F.2d 618.

A vessel 87 feet long, propelled partly by sail and partly by gasoline engines, was not a motorboat, within former section 511 of this title, defining motorboats as vessels propelled by machinery, not more than 65 feet long, and was not governed by former section 513 of this title. *The Alice M. Guthrie*, D.C.Va.1919, 257 F. 472.

2. Location and position

A light carried in the open door of the wheel house did not comply with the requirement of former section 513 of this title as to an aft light. *Puget Sound Nav. Co. v. Nelson*, C.C.A.Wash.1930, 41 F.2d 356, certiorari denied 51 S.Ct. 76, 282 U.S. 869, 75 L.Ed. 768.

3. Sufficiency

Where the aft light of a motorboat, temporarily anchored because of engine trouble, was sufficient, under former section 513 of this title, and the stern of such boat was toward a tug which ran her down, the sufficiency of the motorboat's bow lights was immaterial. *The O'Brien Bros.*, D.C.N.Y.1918, 252 F. 185.

4. Stopping vessels

Coast Guard patrol boats could stop motorboat running without lights at

night in territorial waters. *The Gander*, C.C.A.Conn.1931, 54 F.2d 505.

5. Violation as cause of collision

Plaintiff's testimony as to visibility of fishing boat's light on other occasions was admissible to show noncompliance with requirement of former section 513 of this title as to light could not have caused collision. *Puget Sound Nav. Co. v. Nelson*, C.C.A.Wash.1932, 59 F.2d 697.

Owner of fishing boat who failed to comply with requirement of former section 513 of this title for carrying light was required to show such violation of statute could not have caused collision in order to recover damages therefor. *Id.*

A motor boat not carrying the proper aft light had the burden of showing that its absence did not contribute to collision with an overtaking vessel. *Puget Sound Nav. Co. v. Nelson*, C.C.A.Wash.1930, 41 F.2d 356, certiorari denied 51 S.Ct. 76, 282 U.S. 869, 75 L.Ed. 768.

In suit to recover damages for personal injuries sustained when rowboat containing libellant collided at night with motorboat operated by respondent in a defined channel, evidence was sufficient to show that libellant was negligent in respect to lookout, warning and use of only a flashlight, and was insufficient to show that motorboat was negligent in respect to seaworthiness, lookout lights and manner of operation. *Chimene v. Dow*, D.C.Tex.1952, 104 F.Supp. 473.

Evidence that respondent's motorboat proceeding eastwardly in a narrow bayou veered to the left from its proper course and struck libellant's motorboat proceeding westwardly within five feet of the north shore was sufficient to establish that faulty navigation of respondent's boat was the sole cause of the collision, irrespective of testimony that only anchor lights were visible on libellant's boat. *The Aurora*, D.C.La.1945, 64 F. Supp. 502, affirmed 153 F.2d 224.

6. Failure to comply

Where libellant was negligent in the manner of operating a row boat in a well defined channel and in failing to keep a proper lookout and to maintain proper lights to warn operators of other boats of presence of row boat, and motor boat

colliding with row boat was not negligent in any respect, the libellant was barred from recovery against owner of motor boat for the injuries sustained. *Chimene v. Dow*, D.C.Tex.1952, 104 F. Supp. 473.

§ 526c. Whistles or other sound-producing appliances

Every motorboat of class 1, 2, or 3 of section 526a of this title, shall be provided with an efficient whistle or other sound-producing mechanical appliance. Apr. 25, 1940, c. 155, § 4, 54 Stat. 164.

Notes of Decisions

Apportionment of damages
Burden of proof 3
Liability for collision 3
Type of appliance 1

horn sounded by mechanical means.
The Diamond, C.C.A.Cal.1926, 14 F.2d 923.

3. Burden of proof

In libel arising out of collision between libellant's yacht and respondent's fishing vessel, burden of proving libellant's contention that respondents failed to keep proper and attentive look-out, that they proceeded at immoderate rate of speed and failed to carry a proper horn or signaling device, rested on the libellant. *Mays v. The Eleanor Marie*, D. C.N.C.1952, 103 F.Supp. 271.

1. Type of appliance

Provision of this section applicable to vessels 85 feet long and under that every motorboat of certain classes be provided with an efficient whistle or other sound producing mechanical appliance, and section 191 of Title 33, providing in effect all vessels propelled by machinery shall, when under way in fog, give signals on a whistle or siren which shall be sounded by steam or by some substitute for steam, do not contemplate use of nonmechanical horn sounded by mouth and lungs, but such sections are mandatory. *Mays v. The Eleanor Marie*, D.C.N.C. 1952, 103 F.Supp. 271.

4. Apportionment of damages

In libel for damages to libellant's yacht resulting from collision in fog with respondents' fishing vessel on inland waters, failure of respondent to give required fog signals on whistle or siren sounded by steam or some substitute for steam established liability on their part and in absence of clear and convincing proof of libellant's contributory fault respondents did not overcome presumption against apportionment of damages. *Mays v. The Eleanor Marie*, D.C.N.C.1952, 103 F.Supp. 271.

2. Liability for collision

Under section 91 of Title 33 and former sections 511-519 of this title, motor-driven fishing boat was responsible for collision because of failure to have fog

§ 526d. Bells

Every motorboat of class 2 or 3 of section 526a of this title shall be provided with an efficient bell. Apr. 25, 1940, c. 155, § 5, 54 Stat. 164.

§ 526e. Life preservers, etc.

Every motorboat subject to any of the provisions of this subchapter and also all vessels propelled by machinery other than by steam more than sixty-five feet in length shall carry at least one life preserver, or life belt, or ring buoy, or other device of the sort pre-

scribed by the regulations of the Commandant of the Coast Guard, for each person on board, so placed as to be readily accessible: *Provided*, That every such motorboat and every such vessel propelled by machinery other than by steam more than sixty-five feet in length carrying passengers for hire shall carry so placed as to be readily accessible at least one life preserver of the sort prescribed by the regulations of the Commandant of the Coast Guard, for each person on board. Apr. 25, 1940, c. 155, § 6, 54 Stat. 164; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Effective Date. Section 19 of Act Apr. 25, 1940, provided that this section and sections 526f and 526g of this title should take effect one year from Apr. 25, 1940.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard,

referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

"Commandant of the Coast Guard" was substituted for "board of supervising inspectors with the approval of the Secretary of Commerce" on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Notes of Decisions

1. Readily accessible

Where there were 11 fishermen on fishing trawler, and aboard the trawler was a life preserver for each fisherman in bunk which he occupied, and in addition, on deck in boxes on side of whale-back, there were four additional life preservers, and also on deck there were two ring buoys and captain's life preserver in pilot house, trawler was not at

fault for death of fishermen when trawler was struck by steamship in heavy fog, and sank almost immediately, so that fishermen were not able to go below deck and obtain life preservers, and therefore petition of trawler's owner for limitation of liability would be allowed. *Noble v. Moore-McCormack Lines, D.C. Mass.* 1951, 96 F.Supp. 369.

§ 526f. Motorboats and small craft carrying passengers for hire; operators' licenses

No such motorboat, and no other vessel of fifteen gross tons or less propelled by machinery other than steam, while carrying passengers for hire, shall be operated or navigated except in charge of a person duly licensed for such service by the Secretary of the department in which the Coast Guard is operating. Whenever any person applies to be licensed as operator of any motorboat, or of any other vessel of fifteen gross tons or less propelled by machinery, carrying passen-

gers for hire, the Secretary shall make diligent inquiry as to his character, and shall carefully examine the applicant orally as well as the proofs which he presents in support of his claim, and if the Secretary is satisfied that his capacity, experience, habits of living, and character are such to warrant the belief that he can safely be entrusted with the duties and responsibilities of the station for which he makes application, the Secretary shall grant him a license authorizing him to discharge such duties on any such motorboat, or on any other vessel of fifteen gross tons or less propelled by machinery, carrying passengers for hire, for the term of five years. Such license shall be subject to suspension or revocation on the same grounds and in the same manner with like procedure as is provided in the case of suspension or revocation of licenses of officers under the provisions of section 239 of this title: *Provided*, That motorboats and other vessels of fifteen gross tons or less propelled by machinery shall not be required to carry licensed officers except as required in this subchapter: *And provided further*, That licenses herein prescribed shall not be required of motorboats or of any other vessels of fifteen gross tons or less propelled by machinery engaged in fishing contests previously arranged and announced. Apr. 25, 1940, c. 155, § 7, 54 Stat. 165; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097; May 10, 1956, c. 258, § 6(c), 70 Stat. 154.

Historical Note

1956 Amendment. Act May 10, 1956, amended section by extending its provisions to cover vessels of 15 gross tons or less propelled by machinery other than steam, and by making technical changes.

Effective Date of 1956 Amendment. Amendment of section as effective on June 1, 1958, or on the first day of the sixth month following the prescription of rules and regulations by the Secretary under section 390b of this title, whichever is later, see note set out under section 390 of this title.

Effective Date. Section 19 of Act Apr. 25, 1940, provided that this section and sections 526e and 526g of this title should take effect one year from Apr. 25, 1940.

Transfer of Functions. All functions of all officers of the Department of the Treasury and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such of-

ficers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

References to local board of inspectors were changed to Coast Guard on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Legislative History: For legislative history and purpose of Act May 10, 1956, see 1956 U.S. Code Cong. and Adm. News, p. 2527.

Notes of Decisions

Liability for collision 3
 Operation of ferry 2
 Vessels within section 1

did not preclude exemption from liability under section 192 of this title. *Id.*

2. Operation of ferry

A license from United States to carry passengers for hire on navigable waters is not a license to operate a ferry. *Inhabitants of Town of Beals v. Beal*, 1953, 98 A.2d 552, 149 Me. 19.

3. Liability for collision

Where the *Wildwood* was a motorboat of class 3, and at the time of her collision she was not carrying passengers, and her master, though having a certificate as master, was not 21 years of age, and therefore not qualified to act as such, the age of the master could not be material as she was not carrying passengers, and no fault was attributable to his acts as master at the time of the collision, and her owner was justified in relying upon the certificate. *Brindle v. The Eagle*, 1922, 6 Alaska 503.

1. Vessels within section

Former section 515 of this title was independent of section 404 of this title, requiring all vessels above 15 gross tons carrying freight or passengers for hire to be navigated by licensed pilot aboard and section 520 of this title and said former section required, at most, licensed pilot for motorboats only when carrying passengers for hire. *National Grocery Co. v. Olsen*, 1940, 108 P.2d 320, 6 Wash.2d 491.

Motorboat only 62.2 feet in length and propelled by Diesel engine was not required by former section 515 of this title to have licensed pilot and therefore failure to have licensed pilot on board

§ 526g. Fire extinguishers

Every motorboat and also every vessel propelled by machinery other than by steam more than sixty-five feet in length shall be provided with such number, size, and type of fire extinguishers, capable of promptly and effectually extinguishing burning gasoline, as may be prescribed by the regulations of the Commandant of the Coast Guard; which fire extinguishers shall be at all times kept in condition for immediate and effective use and shall be so placed as to be readily accessible. Apr. 25, 1940, c. 155, § 8, 54 Stat. 165; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Effective Date. Section 19 of Act Apr. 25, 1940, provided that this section and sections 526e and 526f of this title should take effect one year from Apr. 25, 1940.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred

to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

"Commandant of the Coast Guard" was substituted for "board of supervising inspectors, with the approval of the Secretary of Commerce" on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Notes of Decisions

1. Ready for immediate use

"Ready for immediate use" as used in former section 516 of this title required carrying of fire extinguishers in places

other than the engine room. *Christopher v. Grueby* C.C.A.Mass.1930, 40 F.2d 8, certiorari denied 51 S.Ct. 80, 282 U.S. 876, 75 L.Ed. 774.

§ 526h. Exemption of racing outboard motorboats from requirement of sound and fire extinguishing equipment

The provisions of sections 526c, 526d, and 526g of this title shall not apply to motorboats propelled by outboard motors while competing in any race previously arranged and announced or, if such boats be designed and intended solely for racing, while engaged in such navigation as is incidental to the tuning up of the boats and engines for the race. Apr. 25, 1940, c. 155, § 9, 54 Stat. 165.

§ 526i. Carburetor flame arrestors and backfire traps

Every motorboat and also every vessel propelled by machinery other than by steam more than sixty-five feet in length shall have the carburetor or carburetors of every engine therein (except outboard motors) using gasoline as fuel, equipped with such efficient flame arrestor, backfire trap, or other similar device as may be prescribed by the regulations of the Commandant of the Coast Guard: *Provided*, That this section shall apply only to such motorboats or vessels, the construction of which or the replacement of the engine or engines of which is commenced subsequent to April 25, 1940. Apr. 25, 1940, c. 155, § 10, 54 Stat. 165; 1946 Reorg.Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the

functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

"Commandant of the Coast Guard" was substituted for "board of supervising inspectors with the approval of the Secretary of Commerce" on authority of 1946 Reorg.Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

§ 526j. Ventilation of engine and fuel compartment bilges on open vessels using volatile liquids as fuel

Every such motorboat and every such vessel, except open boats, using as fuel any liquid of a volatile nature, shall be provided with such means as may be prescribed by regulations of the Commandant of the Coast Guard for properly and efficiently ventilating the bilges of the engine and fuel tank compartments so as to remove any explosive or inflammable gases: *Provided*, That this section shall apply only to such motorboats or vessels, the construction or decking over of which is commenced subsequent to April 25, 1940. Apr. 25, 1940, c. 155, § 11, 54 Stat. 165; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the

functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

"Commandant of the Coast Guard" was substituted for "board of supervising inspectors with the approval of the Secretary of Commerce" on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Notes of Decisions

1. Generally

Where a charter party for a motorboat provided, among other things, that charterer had examined the boat and had found it in excellent condition with complete coast guard approval and required equipment, but under the circumstances of the leasing it was impossible for a defect in the boat, which later led to an explosion, to have been discovered without removing the flooring or cover in the bottom of the boat, and such inspection was not made, under such circumstances, charter party would not be deemed to have relieved owner-lessor from liability for unseaworthiness of the boat by use of language in such charter party to the effect that charterer agreed

to protect owner from liability for any damage by reason of any defects of the boat. *Rothman v. U-Steer-It, Inc.*, C.A. Fla. 1957, 247 F.2d 803.

Where owner of certain motorboats was in the business of leasing boats to be driven or steered by charterers, owner could not escape liability for furnishing an unseaworthy vessel which had a leaking gas tank which could not have been discovered by charterer, by ordinary use and care, through use of a charter party wherein charterer agreed to protect the owner from any damages sustained by reason of any defect in the boat, and that he would not sue owner, and that he released it from any claims or demands for id.

§ 526k. Carrying copies of pilot rules

Motorboats shall not be required to carry on board copies of the pilot rules. Apr. 25, 1940, c. 155, § 12, 54 Stat. 166.

§ 526l. Reckless or negligent operation of vessels; prohibition

No person shall operate any motorboat or any vessel in a reckless or negligent manner so as to endanger the life, limb, or property of any person. Apr. 25, 1940, c. 155, § 13, 54 Stat. 166.

Notes of Decisions

Boats within section
Negligence 2

1. Boats within section

This section is not restricted to motorboats but applies to sail boats as well. U. S. v. Meckling, 141 F.Supp. 608.

2. Negligence

Under this section word negligent means failure to use that care which a reasonable man would exercise under similar circumstances. U. S. v. Meckling, D.C.Md. 1958, 141 F.Supp. 608.

§ 526m. Same; penalty

Any person who shall operate any motorboat or any vessel in a reckless or negligent manner so as to endanger the life, limb, or property of any person shall be deemed guilty of a misdemeanor and on conviction thereof by any court of competent jurisdiction shall be punished by a fine not exceeding \$2,000, or by imprisonment for a term of not exceeding one year, or by both such fine and imprisonment, at the discretion of the court. Apr. 25, 1940, c. 155, § 14, 54 Stat. 166.

Notes of Decisions

Distress signals 2
Navigable water 1
Negligent operation 4
Weather conditions 3

1. Navigable water

Where borrow pit between levee and Mississippi River was not used by any one for navigation purposes except defendant and his father, and by them during hunting season to transport duck hunters from dock on pit to an island in river, and opening between pit and river was so shallow that outboard motor on boat could not be used, borrow pit was not "navigable water" so as to give United States jurisdiction under this subchapter over a charge of negligent operation of a motor boat in the pit endangering lives of divers persons. U. S. v. Ross, D.C.Mo.1947, 74 F.Supp. 6.

2. Distress signals

In prosecution for misconduct and inattention to duties of master of a vessel

causing loss of life and for operation of a vessel in a reckless or negligent manner so as to endanger life when sailing vessel operated by defendant capsized with a loss of life of 14 of 23 passengers, evidence sustained finding that the vessel's radio was capable of sending at least weak distress signals during the period when the water was rising faster in the vessel than the pumps could handle it. U. S. v. Meckling, D.C.Md. 1958, 141 F.Supp. 608.

3. Weather conditions

In prosecution for misconduct and inattention to duties of master of a vessel causing loss of life and for operation of a vessel in a reckless or negligent manner so as to endanger life when sailing vessel operated by defendant capsized with a loss of life of 14 of 23 passengers, evidence established that defendant was entitled to rely upon the specific wind velocities forecast and that he was not required to substitute his judgment for that of the official local broadcast and that in sailing from his port and pro-

ceeding up to a point where the sails were lost his conduct was that of a reasonably prudent master. *U. S. v. Meckling*, D.C.Md.1956, 141 F.Supp. 608.

4. Negligent operation

In prosecution for misconduct and inattention to duties of master of a vessel causing loss of life and for operation of a vessel in a reckless or negligent manner so as to endanger life when sailing vessel operated by defendant capsized with a loss of life of 14 of 23 passengers, evidence established that the failure of the defendant to carry barometer on the vessel had no causal connection with the loss of life and did not constitute negligence. *U. S. v. Meckling*, D.C.Md.1956, 141 F.Supp. 608.

In prosecution for misconduct and inattention to duties of master of a vessel causing loss of life and for operation of a vessel in a reckless or negligent manner so as to endanger life when sailing vessel operated by defendant capsized with a loss of life of 14 of 23 passengers, evidence established beyond a reasonable doubt that defendant was negligent in operation of vessel and that such negligence endangered life. *Id.*

In prosecution for misconduct and inattention to duties of master of a vessel causing loss of life and for operation of a vessel in a reckless or negligent manner so as to endanger life when sailing vessel operated by defendant capsized with a loss of life of 14 of 23 passengers, evidence did not establish beyond a reasonable doubt that there was misconduct, negligence or inattention on the part of defendant that resulted in destruction of life. *Id.*

In prosecution for the negligent operation of a motorboat, evidence of knowledge that defendant had of river, of the dam, of his failure to see lights at lock, his ignorance of island in river, together with his lack of knowledge of channel in which he ran motorboat and the current therein was sufficient to establish negligence on part of defendant beyond a reasonable doubt when defendant lost control of boat at night so that it went over dam and afterwards upset. *U. S. v. McHugh*, D.C.Pa.1952, 103 F.Supp. 740.

Under this section conviction may be had of defendant who operates a motorboat in a negligent manner, although his conduct may not have been reckless. *Id.*

§ 526n. Same; arrest; procedure after arrest

Any officer of the United States authorized to enforce the navigation laws of the United States, shall have power and authority to swear out process and to arrest and take into custody, with or without process, any person who may commit any act or offense prohibited by section 526l of this title, or who may violate any provision of said section: *Provided*, That no person shall be arrested without process for any offense not committed in the presence of some one of the aforesaid officials: *Provided further*, That whenever an arrest is made under the provisions of this subchapter, the person so arrested shall be brought forthwith before a commissioner, judge, or court of the United States for examination of the offense alleged against him, and such commissioner, judge, or court shall proceed in respect thereto as authorized by law in cases of crimes against the United States. Apr. 25, 1940, c. 155, § 15, 54 Stat. 166.

§ 526o. Violations generally; penalties

If any motorboat or vessel subject to any of the provisions of this subchapter is operated or navigated in violation of this subchapter or any regulation issued thereunder, the owner or operator, either one or both of them, shall, in addition to any other penalty prescribed by law than that contained in section 526m of this title, be liable to a

penalty of \$100: *Provided*, That in the case of motorboats or vessels subject to the provisions of this subchapter carrying passengers for hire, a penalty of \$200 shall be imposed on the owner or operator, either one or both of them, thereof for any violation of sections 526e, 526f, or 526g of this title or of any regulations pertaining thereto. For any penalty incurred under this section the motorboat or vessel shall be held liable and may be proceeded against by way of libel in the district court of any district in which said motorboat or vessel may be found. Apr. 25, 1940, c. 155, § 16, 54 Stat. 166.

Notes of Decisions

Evidence 2
Fines 3
Jurisdiction 1

1. Jurisdiction

Court of district other than where offense occurred had jurisdiction of forfeiture proceeding based on vessel's failure to carry lights. *The Mary*, D.C.Mass. 1932, 59 F.2d 771.

2. Evidence

In proceeding to subject motorboat to penalty for running at night without lights, evidence established *prima facie* case for government. *The Gander*, C.C. A.Conn.1931, 54 F.2d 505.

3. Fines

Fine of \$75 was properly imposed on motorboat, less than 65 feet long, for failure to carry necessary lights. *The Pueblos*, C.C.A.Conn.1935, 77 F.2d 618.

§ 526p. Regulations; remission or mitigation of fines, penalties, etc.

The Commandant of the Coast Guard shall establish all necessary regulations required to carry out in the most effective manner all of the provisions of this subchapter, and such regulations shall have the force of law. The Commandant of the Coast Guard or any officer of the Coast Guard authorized by the Commandant may, upon application therefor, remit or mitigate any fine, penalty, or forfeiture incurred under this subchapter or any regulation thereunder relating to motorboats or vessels, except the penalties provided for in section 526m of this title. The Commandant of the Coast Guard shall establish such regulations as may be necessary to secure the enforcement of the provisions of this subchapter by any officer of the United States authorized to enforce the navigation laws of the United States. Apr. 25, 1940, c. 155, § 17, 54 Stat. 166; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg.

Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast

Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

References to the board of supervising inspectors and to the Secretary of Commerce were changed to Commandant of the Coast Guard, reference to Department of Commerce was changed to Coast Guard, and provisions for approval of

regulations by the Secretary of Commerce were omitted on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

§ 526q. Application of other laws

The proviso contained in the last paragraph of section 223 of this title shall apply also with like force and effect to motorboats as defined in this subchapter.

Motorboats as defined in this subchapter are exempted from the provisions of section 361 of this title. Apr. 25, 1940, c. 155, § 18, 54 Stat. 166.

§ 526r. Laws unaffected

Nothing in this subchapter shall be deemed to alter or amend section 367 or 391a of this title, or repeal Acts of Congress or treaties embodying or revising international rules for preventing collisions at sea. Apr. 25, 1940, c. 155, § 19, 54 Stat. 167.

§ 526s. Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this subchapter. Apr. 25, 1940, c. 155, § 20, 54 Stat. 167

§ 526t. Necessity of keeping on board certificate of award of number

The provisions of section 288 of this title, requiring a certificate of award of a number to be kept at all times on board of the vessel to which the number has been awarded shall not apply to any vessel not exceeding seventeen feet in length measured from end to end over the deck, excluding sheer, or to any vessel whose design of fittings are such that the carrying of the certificate of award of the number on such vessel would render such certificate imperfect, illegible, or would otherwise tend to destroy its usefulness as a means of ready identification. Apr. 25, 1940, c. 155, § 21, 54 Stat. 167.

CHAPTER 17.—REGULATION OF FISHING VOYAGES

Sec.

531. Agreement for fishing voyage.

532. Penalty for violating agreement.

533. Recovery of shares of fish under agreement.

534. Discharge of vessel on bond by owner.

§ 531. Agreement for fishing voyage

The master of any vessel of the burden of twenty tons or upward, qualified according to law for carrying on the bank and other cod fisheries, or the mackerel fishery, bound from a port of the United States to be employed in any such fishery, at sea, shall, before proceeding on such fishing voyage, make an agreement in writing with every fisherman who may be employed therein, except only an apprentice or servant of himself or owner, and, in addition to such terms of shipment as may be agreed on, shall, in such agreement, express whether the same is to continue for one voyage or for the fishing season, and shall also express that the fish or the proceeds of such fishing voyage or voyages which may appertain to the fishermen shall be divided among them in proportion to the quantities or number of such fish which they may respectively have caught. Such agreement shall be indorsed or countersigned by the owner of such fishing vessel or his agent. R.S. § 4391.

Historical Note

Derivation. Acts June 19, 1813, c. 2, § 1, 3 Stat. 2; Mar. 3, 1865, c. 117, 13 Stat. 535.

Cross References

Licensing vessels for carrying on the coasting trade or fisheries, see section 251 et seq. of this title.

Waiver of compliance with navigation and vessel inspection laws for defense purposes, see note preceding section 1 of this title.

Notes of Decisions

Generally 1
Collision, recovery for 14
Compensation 7
Contracts, generally 3
Disability of seamen 3
Discharge 9
Duties and performance 6
Half line plan 2
Lessee's rights 13
Liens
 Generally 11
 Priority 12
Measure of damages 15
Necessity for writing 4
Performance 6

Priority of liens 12
Relationship of parties 5
Termination of voyage 10

1. Generally

This chapter relates solely to food fisheries. *Manchester v. Massachusetts*, Mass.1891, 11 S.Ct. 559, 139 U.S. 240, 35 L.Ed. 159.

This chapter does not apply to vessels and crews engaged in porgy fishing. *The Grace Darling*, D.C.Me.1878, Fed.Cas. No.5,851.

This section does not apply to whaling voyages. *The Atlantic*, D.C.N.Y.1849, Abb. Adm. 451, 2 Fed.Cas.No.620.

2. Half line plan

The "half line" plan in the fishing business is an arrangement between the owners of a fishing vessel and a master and his crew, whereby the master undertakes a fishing voyage, in which the gross proceeds of the catch, less certain deductions, are shared equally between the vessel and the master and crew, the latter half share, after payment for certain things charged to the master and crew as a body, being divided among them share and share alike, and the voyage is a "half line voyage." *Welch v. Fallon*, D.C.Mass.1909, 181 F. 875.

3. Contracts, generally

Where alleged contract was not introduced in evidence and was contrary to the theory upon which the respondent tried its case and there was positive testimony that there was no written contract covering fishing season involved, the Court of Appeals would not consider that the agreement in question applied to the season in controversy. *Van Camp Sea Food Co. v. Di Leva*, C.A.Cal.1948, 171 F.2d 454.

The shipping of fishermen by oral agreement by terms different from those provided by this section which requires a written agreement with fishermen is not contrary to law within section 578 of this title, authorizing seamen shipping contrary to the provisions of any Act of Congress to recover the highest rate of wages from the port from which they were shipped, nor were fishermen who shipped for a share in the catch "seamen" as that word is used in the latter section. *The Cornelia M. Kingsland*, D.C.N.Y.1885, 25 F. 856.

Where persons made a parol agreement with the master of a fishing boat to serve thereon as mariners and fishermen for the fishing season for certain wages in money, and under such agreement they went on board, but some seven or eight days thereafter, while the vessel was fitting for the voyage, and at the master's request, they signed a written agreement corresponding in all respects with the form of the fishing agreement usually adopted where the master and crew are shipped to serve for shares of the fish caught during the season or voyage, without reading or understanding the terms thereof, they were entitled to wages according to the oral agreement, such agreement not being modified or varied in any respect by the written

agreement. *Sweeney v. Cloutman*, C.C.Mass.1862, 2 Cliff. 85, 23 Fed.Cas.No.13,685.

Fishermen who ship without a written agreement are not within this chapter. *The Ianthe*, D.C.Me.1856, Fed.Cas.No.6,992.

The contract expressed in a shipping paper signed at the commencement of a fishing voyage cannot be varied by a parol agreement or understanding which is in violation of an Act of Congress. *Rich v. The Cherub*, D.C.Mass.1823, Fed.Cas.No.11,756.

4. Necessity for writing

This section and section 532 of this title do not prohibit the shipment of fishermen on any terms agreed upon, either orally or in writing, and such contracts are valid and enforceable. *The American Beauty*, D.C.Wash.1924, 295 F. 513.

"This Act [this chapter] does not contemplate or provide for the case of a fisherman shipped without a written agreement, and by not providing for it leaves the rights of the parties to be determined by the principles of law governing other parol contracts, that is, it leaves them just such rights as are secured by their agreements, and gives them no others." *The Ianthe*, D.C.Me.1856, 3 Ware 126, 12 Fed.Cas.No.6,992.

The entire contract between fishermen and skipper must be in writing, and such as is provided by law, to entitle the vessel to a bounty. *Crowell v. U. S.*, C.C.Mass.1856, Fed.Cas.No.3,447. See, also, *U. S. v. Atkins*, D.C.Mass.1856, Fed.Cas.No.14,474.

This section "is positive and unequivocal, that the master of every fishing vessel of more than twenty tons shall, before proceeding on his voyage, make an agreement in writing, for shares, with every fisherman employed therein. By this law the agreement is to be made with the master, and it is the master's duty to have the articles signed." *Whalen v. The Silver Spring*, D.C.Mass.1854, 29 Fed.Cas.No.17,477.

5. Relationship of parties

Captain and members of crew of one vessel are not fellow servants of the captain and crew of another vessel even though both vessels have the same owner, where each vessel is separately engaged in seasonal fishing venture. *Van Camp Sea Food Co. v. Di Leva*, C.A.Cal.1948, 171 F.2d 454.

Where the owner of a vessel lets her to a master for a fishing voyage on a

Note 5

lay by which the master and crew are to pay all running expenses, and the master ships his own crew, they are not partners with the master in the enterprise, so as to be liable with him for advances made to him by the owner for running expenses. *The Mettacomet*, D. C. Mass. 1915, 230 F. 308.

The kind of engagement entered into in fishing voyages, by which the fishermen are engaged for a share of the proceeds of the voyage instead of for wages at a fixed rate, constitutes a species of imperfect partnership, the men being directly interested in the fruits of the adventure and depending for their remuneration on its success, "But the fishermen are not in such cases considered as partners with the owner in the proper sense of the word. The shares for which they contract are in the nature of wages, and an action of *assumpsit* lies at common law, or a libel may be brought in the admiralty for their share of the proceeds or profits of the adventure, to be ascertained by a final settlement of the voyage." *The Crusader*, D. C. Me. 1837, 1 Ware 437, 6 Fed. Cas. No. 3,456.

6. Duties and performance

A usage or custom in fishing voyages to carry only a partial supply of bait, relying upon catching sufficient fish to supply the deficiency, is reasonable, and where the vessel, having failed to catch bait, put into port for supply, causing a delay of a few days, the seamen are not justified in refusing duty. *The Tarquin*, D. C. Mass. 1874, Fed. Cas. No. 13,755.

Seamen forfeit all wages by refusing duty before a fishing voyage is ended, and obliging the master to return with only part of a fare. *Id.*

Where by the articles the crew of a fishing vessel were to make the fish, readiness and willingness to make the fish was equivalent to actual performance. *Goodrich v. The Domingo*, D. C. Cal. 1870, Fed. Cas. No. 5,543.

7. Compensation

A fishing vessel was not liable for extra wages due a cook, who, like the other members of the crew, shipped on the lay. *The Mettacomet*, Mass. 1916, 233 F. 261, 147 C. C. A. 267.

Members of the crew of a fishing schooner shipping on the half lay, to be paid by shares in the catch, have the rights of seamen claiming wages as regards recovery of the amounts of their shares, and a member of such a crew who without his fault became

separated from his vessel, and was unable to rejoin it during the season, is entitled to the same proportion of his share of the proceeds of the whole catch as the time of his actual service on board bears to the time occupied by the whole voyage, the remainder of his share to be distributed between the other members of the crew. *Martin v. Carroll*, D. C. Mass. 1909, 181 F. 708.

Fishermen are seamen, and except as modified by their peculiar contracts, express or implied, are protected by the law as other seamen are, and for their wages may look to the vessel, her master, and ordinarily her owners. *The Carrier Dove*, Mass. 1899, 97 F. 111, 38 C. C. A. 73.

A member of the crew of a fishing vessel, who is left behind at a port by his vessel while trying, in her interest, to induce members of the crew, who have left her, to return, is entitled to recover his share of the catch, his expenses, and the value of his outfit carried away. *Flynn v. The Nereid*, D. C. Mass. 1895, 67 F. 602.

Members of the crew of a fishing vessel, who leave her, without permission, in order to carouse on shore, and refuse to return when summoned, and are in consequence left behind by the vessel, should be subjected to the loss resulting from their failure to perform duty. *Id.*

A master and crew wrongfully discharged by the owner of a fishing vessel from employment under a contract for the entire season, wages to be in the ratio of the quantity of fish caught, may recover damages for such discharge, based on the amount they would have received as wages on the catch of the whole season, less the amount actually paid them, and any wages earned by them during the season, after their discharge. *Fee v. Orient Guano Mfg. Co.*, C. C. N. Y. 1890, 44 F. 430.

Seamen in a fishing adventure are entitled to compensation for the neglect of the master in procuring salt, resulting in breaking up the voyage before the close of the season. *The Page*, D. C. Cal. 1878, Fed. Cas. No. 10,660.

The crew of a fishing vessel, not having signed shipping articles as required by this title, may collect their shares or wages. *The Grace Darling*, D. C. Me. 1873, Fed. Cas. No. 5,651.

Sharemen in a cod-fishing voyage are not to suffer loss by bad debts contracted by the owner in the sale of the fish. *Crowell v. Knight*, D. C. Mass. 1874, Fed. Cas. No. 3,445.

The owners are not liable for the value of catchings as of the time when received, where, in good faith, they held them waiting for a rise in the market. *Frates v. Howland*, D.C.Mass.1871, Fed. Cas.No.5,066.

An agreement to renounce wages for a share in the catch on a fishing voyage disregarded where unequal and unjust. *Somerville v. The Francisco*, D.C.Cal.1870, Fed.Cas.No.13,171.

A deduction of wages not allowed where seaman failed to stay by a fishing vessel until she was unloaded and cleaned, though such was the local usage, where the seamen were not asked to stay by the vessel. *The Olive Branch*, D.C.Mass.1868, Fed.Cas.No.10,490.

Owners of fishing vessel were liable for the wages of the seamen to the extent of the proceeds of the sale of the wreck, though the vessel was hired by the master for the season, and he had undertaken to pay the wages. *Flaherty v. Doane*, D.C.Mass.1867, Fed.Cas. No.4,849.

Where a long delay (nearly six years) to prosecute for a share in the catch is not shown to have led to any losses, acts, or divisions of profits, injurious to the owners, the delay is no bar. *Joy v. Allen*, C.C.Mass.1846, Fed.Cas.No.7,552.

Where compensation for a fishing voyage is made by a share of the proceeds, the seamen are entitled to shares only on so much cargo as is brought safely to home port. *Reed v. Hussey*, D.C.N. Y.1836, Fed.Cas.No.11,646.

An agreement on a sealing voyage for shares of every article "procured by the crew" does not give a right to a share of freight earned by the transportation of merchandise. *The Sarah Jane*, D.C.N.Y.1833, Fed.Cas.No.12,348.

8. Disability of seamen

A member of the crew of a fishing vessel, shipping on a lay, who was injured while in the service without his fault, and thereby disabled until after the voyage ended, is entitled to his share in the proceeds, as though he had remained on board and served until the end. *Welch v. Fallon*, D.C.Mass.1909, 181 F. 875. See, also, *Olsen v. Whitney*, D.C. Cal.1901, 109 F. 89.

9. Discharge

Evidence supported finding that libellant and intervening libellants were ready, willing and able to continue performance of their fishing lay agree-

ments to conduct tuna fishing venture and were wrongfully discharged by boat owner. *Putnam v. Lower*, C.A.Wash. 1956, 236 F.2d 561.

The owners of a fishing vessel will be discharged by a payment to the assignee of a nonnegotiable order of a sharesman. *Crowell v. Knight*, D.C.Mass.1874, Fed. Cas.No.3,445.

10. Termination of voyage

The contract of employment of fishermen is terminated by operation of maritime law on the breaking up of the voyage as a result of a collision. *Andich v. The Marsha Ann*, D.C.Cal.1950, 92 F. Supp. 929, affirmed in part and reversed in part on other grounds 191 F.2d 392, certiorari denied 72 S.Ct. 293, 342 U.S. 905, 96 L.Ed. 677, rehearing denied 72 S.Ct. 374, 342 U.S. 934, 96 L.Ed. 695.

11. Liens—Generally

Fishermen, although possessing wages and customs peculiar to their business, are nonetheless "seamen", and, therefore, despite compensational differences, lay fishermen or sharesmen possess a right similar to that enjoyed by regular seamen, to lien the vessel and catch on board to secure compensation, and such right is "maritime" in nature. *Putnam v. Lower*, C.A.Wash.1956, 236 F.2d 561.

Where boat owner had wrongfully abandoned his share agreements for conducting tuna fishing venture before date of sharesmen's libel of vessel for damages resulting from boat owner's alleged wrongful action relating to the fishing lay, claims by sharesmen existed at and before the time the ship was libeled, and were not cut off by such libel. *Id.*

Members of crew, on fishing trip under the quarter lay plan, have a lien on the vessel and the catch, corresponding to that of seamen shipped for hire. *The Georgiana*, Mass.1917, 245 F. 321, 157 C.C.A. 513.

The fact that the master, who is part owner of a fishing vessel, charts it from his co-owners for a voyage on the "quarter clear lay," and afterwards engages a crew, agreeing to give them the same share of the catch as though they had together chartered the vessel, does not render the members of the crew co-charterers, but they have all the rights of seamen, including the right to a lien on the vessel, as for wages, for the value of their share of the catch. *The Carrier Dove*, Mass.1899, 97 F. 111, 38 C.C.A. 73.

An agreement by seamen to serve on lays on a fishing voyage, made with the master, who had made an oral agreement with the owners of the vessel to ship the crew and to pay to the owners a specified portion of the proceeds of the catch, does not change their character as seamen, their shares being substantially wages, nor deprive them of their right to a lien therefor against the vessel, where the master, after disposing of the catch, absconded with the proceeds. *The Carrier Dove*, D.C.Mass.1899, 93 F. 978.

Persons employed on a fishing tug, solely for the purpose of catching and preserving fish, are entitled to proceed against the vessel for their wages, notwithstanding they take no part in the navigation, and that an incidental portion of their duties is performed on shore. *The Minna*, D.C.Mich.1882, 11 F. 759.

Where a cook and a seaman employed on a fishing vessel each libeled her for wages, and it appeared that the owners were to have one-third of the menhaden caught, and the master and crew the other two-thirds in lieu of wages, clear proof of an agreement to rely upon personal credit alone is required to defeat the lien of seamen upon the vessel for their pay, and upon slight or contradictory proofs of such waiver the presumption of the maritime law must control. *The Sirocco*, D.C.N.Y.1881, 7 F. 599.

A crew of a steamer comprised of sharesmen and strikers engaged in porgy fishing, upon being refused payment for their services at the time agreed upon, may enforce their lien upon the vessel before their term of service has expired. *The Grace Darling*, D.C.Me.1878, Fed.Cas. No.5,651.

The crew of a steamer, comprised of sharesmen and strikers engaged in porgy fishing, have a maritime lien upon the vessel for their wages, but the master does not. *Id.*

The mate and cook of a porgy steamer, employed for the fishing season at stipulated wages, have a lien upon the vessel therefor. *The Helen M. Pierce*, D.C.Me. 1877, Fed.Cas.No.6,332.

A minor employed on such steamer by the master, at all work, has a lien for his wages, even though the owner is authorized by the sharesmen to retain from their shares his wages. *Id.*

Seamen on a fishing voyage have a lien on the fish for their wages; and, where the shipowner becomes bankrupt, this lien follows the proceeds of the fish into the hands of his assignees. *In re Low*, D.C.Mass.1873, Fed.Cas.No.8,558.

This chapter neither gives to the fishermen a lien for wages on the fish caught and on the proceeds of their sale, nor recognizes the existence of such a lien. *Story v. Russell*, 1892, 31 N.E. 753, 157 152.

12. — Priority

Where failure of tuna fishing venture was solely due to actions of boat owner, and sharesmen under share agreements were without fault, allowance to sharesmen for their time and service in sailing boat at owner's request was in nature of seamen's wages and should be given priority over mortgage on the boat. *Putnam v. Lower*, C.A.Wash.1956, 236 F.2d 561.

Where failure of tuna fishing venture was solely due to actions of boat owner, and sharesmen under share agreements were without fault, sharesmen were each entitled to judgment against boat owner for amount furnished by them under the share agreements, but inasmuch as such sums were being awarded strictly on basis of breach of contract, and not wages, they should not be given priority over mortgage on the boat. *Id.*

13. Lessee's rights

Where a government lease of sealing privileges was made expressly subject to such subsequent regulations as the government might prescribe and by subsequent lawful regulations, the authorized annual catch was reduced below that specified in the lease, the lessee was not entitled to damages from the government by reason thereof. *North American Commercial Co. v. U. S.*, N.Y.1898, 18 S.Ct. 817, 171 U.S. 110, 43 L.Ed. 98.

14. Collision, recovery for

Fishermen employed on lay plan on fishing vessel colliding with another vessel have no right of recovery against their master or owner of fishing vessel unless master or owner is at fault. *Antich v. The Marsha Ann*, D.C.Cal.1950, 92 F.Supp. 929, affirmed in part and reversed in part on other grounds 191 F.2d 392, certiorari denied 72 S.Ct. 298, 342 U.S. 905, 96 L.Ed. 677, rehearing denied 72 S.Ct. 374, 342 U.S. 934, 96 L.Ed. 695.

15. Measure of damages

Profits from a fishing lay are too speculative and uncertain to be a proper measure of damages except wherein there is an established going business or in other cases where a yardstick of profit appears in the case. *Putnam v. Lower*, C.A.Wash.1956, 236 F.2d 561.

Where failure of tuna fishing venture was solely due to actions of boat owner, and sharesmen under share agreements were without fault, sharesmen were entitled to respective amounts expended for the working share agreements, together

with a fair allowance for the time and services in sailing boat at owner's request, but prospective profits were too speculative in nature and could not be recovered as damages. *Id.*

§ 532. Penalty for violating agreement

If any fisherman, having engaged himself for a voyage or for the fishing season in any fishing vessel and signed an agreement therefor, thereafter and while such agreement remains in force and to be performed deserts or absents himself from such vessel without leave of the master thereof, or of the owner or his agent, such deserter shall be liable to the same penalties as deserting seamen are subject to in the merchant service, and may in the like manner, and upon the like complaint and proof, be apprehended and detained; and all costs of process and commitment, if paid by the master or owner, shall be deducted out of the share of fish or proceeds of any fishing voyage to which such deserter had or shall become entitled. Every fisherman, having so engaged himself, who during such fishing voyage refuses or neglects his proper duty on board the fishing vessel, being thereto ordered or required by the master thereof, or otherwise resists his just commands to the hinderance or detriment of such voyage, besides being answerable for all damages arising thereby, shall forfeit to the use of the owner of such vessel his share of any public allowance which may be paid upon such voyage. R.S. § 4392.

Historical Note

Derivation. Act June 19, 1813, c. 2, § 1, 3 Stat. 2.

Cross References

Penalty for desertion by seamen in merchant service, see sections 576 and 701 of this title.

Notes of Decisions

1. Fishermen and seamen

"Fishermen in the Revised Statutes, and in all our legislation from the inception of the government downwards, have been treated distinctively under the

name of 'fishermen;' never under the name of 'seamen.'" *The Cornelia M. Kingsland*, D.C.N.Y.1885, 25 F. 856. See, also, *Telles v. Lynde*, D.C.Cal.1891, 47 F. 912.

§ 533. Recovery of shares of fish under agreement

Whenever an agreement or contract is so made and signed for a fishing voyage or for the fishing season, and any fish caught on board such vessel during the same are delivered to the owner or to his agent, for cure, and sold by such owner or agent, such vessel shall, for the term of six months after such sale, be liable for the master's and every other fisherman's share of such fish, and may be pro-

ceeded against in the same form and to the same effect as any other vessel is by law liable, and may be proceeded against for the wages of seamen or mariners in the merchant service. Upon such proceeding for the value of a share or shares of the proceeds of fish so delivered and sold it shall be incumbent on the owner or his agent to produce a just account of the sales and division of such fish according to such agreement or contract; otherwise the vessel shall be answerable upon such proceeding for what may be the highest value of the shares demanded. But in all cases the owner of such vessel or his agent, appearing to answer in such proceeding, may offer thereupon his account of general supplies made for such fishing voyage and of other supplies therefor made to either of the demandants, and shall be allowed to produce evidence thereof in answer to their demands respectively; and judgment shall be rendered upon such proceeding for the respective balances which upon such an inquiry shall appear. R.S. § 4393.

Historical Note

Derivation. Act June 19, 1813, c. 2, § 2, 3 Stat. 2.

Notes of Decisions

Generally 1
Burden of proof 5
Damages 6
Judicial notice 4
Libel 3
Proceeding in rem
Release 7

1. Generally

This section provides, when an agreement is made and signed as set out in section 531 of this title, "and the fish taken have been cured and sold by the owner, that the vessel shall for six months after such sale be liable for the skipper's and each seaman's share, and may be proceeded against as any other vessel may be for seamen's wages, and on such process the owners shall produce a just and true account of the sales and division of the fish according to the agreement; otherwise the ship shall be answerable for the highest value of the shares demanded." *The Lanthe*, D.C.Me. 1856, 3 Ware 126, 12 Fed.Cas.No.8,992.

2. Proceeding in rem

This section plainly imports that courts of admiralty cannot afford the remedy of a proceeding in rem without the authority of a positive statute. *The Fair Play*, D.C.N.Y.1830, Blatchf. & H. Adm. 136, 8 Fed.Cas.No.4,615.

3. Libel

Where each fishing vessel having same owner is separately engaged in seasonal fishing venture and collision between them is caused by negligent operation of one vessel, the captain and crew of the other vessel may maintain libel against owner of vessel at fault for loss of earnings due to layup of vessel. *Van Camp Sea Food Co. v. Di Leva*, C.A.Cal. 1948, 171 F.2d 454.

4. Judicial notice

The court judicially knows that the California sardine industry has been established in the waters off Southern California for many decades. *Van Camp Sea Food Co. v. Di Leva*, C.A.Cal.1948, 171 F.2d 454.

5. Burden of proof

In libel for loss of earnings due to layup of vessel from collision, burden of proof as to time of layup is on the libelants. *Van Camp Sea Food Co. v. Di Leva*, C.A.Cal.1948, 171 F.2d 454.

6. Damages

Where a fishing vessel was damaged in collision, and there were 48 days remaining of the season after a nine day layup, division of the total catch by 48 days is proper method of ascertaining damages. *Van Camp Sea Food Co. v. Di Leva*, C.A.Cal.1948, 171 F.2d 454.

7.

The claim of fishermen employed on lay plan to undivided share of prospective catch of fish during repair of fishing vessel after collision is at most a tenancy in common, and as a tenant in common one of the fishermen has no right to release the claim as to all or to receive

payment for the whole. *Ancich v. The Marsha Ann*, D.C.Cal.1950, 92 F.Supp. 929, affirmed in part and reversed in part on other grounds 191 F.2d 392, certiorari denied 72 S.Ct. 293, 342 U.S. 905, 96 L.Ed. 677, rehearing denied 72 S.Ct. 374, 342 U.S. 934, 96 L.Ed. 695.

§ 534. Discharge of vessel on bond by owner

When process shall be issued against any vessel so liable, if the owner thereof or his agent will give bond to each fisherman in whose favor such process shall be instituted, with sufficient security, to the satisfaction of two justices of the peace, of whom one shall be named by such owner or agent, and the other by the fisherman or fishermen pursuing such process, or if either party shall refuse, then the justice first appointed shall name his associate, with condition to answer and pay whatever sum shall be recovered by him or them on such process, there shall be an immediate discharge of such vessel. Nothing in this section or section 533 of this title shall prevent any fisherman from having his action at common law for his share or shares of fish or the proceeds thereof. R.S. § 4394.

Historical Note

Derivation. Act June 19, 1813, c. 2, § 2, 3 Stat. 2.

CHAPTER 18.—MERCHANT SEAMEN

Sections 541–681 are set out in this volume

SHIPPING COMMISSIONERS

Sec.

- 541. Appointment; accounts; expenditures; compensation; clerks.
- 542. Bond and oath.
- 542a. Demanding or receiving remuneration for supplying seamen for merchant vessels; penalty.
- 543. When officers of customs shall act.
- 544. Vessels in coastwise trade.
- 545. Duties.
- 546. Penalty for personating shipping commissioner.
- 547–549. Omitted.

SHIPMENT OF CREW

- 561. Apprentices.
- 562. Indenture of apprentice to be produced to commissioner.
- 563. Shipment of crews; shipping agreements.
- 564. Shipping articles.
- 565. Rules for shipping articles.
- 566. Exception as to shipping articles.
- 567. Penalty for shipping without agreement.
- 568. Penalty for knowingly shipping seamen without articles.
- 569. Shipping seamen to replace those lost by desertion or casualty.
- 570. Shipping seamen in foreign ports.
- 571. Penalty for violating section 570 of this title.
- 572. Voyage or term for which seamen may be shipped; reshipment.
- 573. Voyage or term of seamen shipped in foreign port; reshipment; bond.
- 574. Shipping articles for vessels in coasting trade.
- 575. Penalty for shipping without articles.
- 576. Penalty for omitting to begin voyage.
- 577. Posting copy of agreement.
- 578. Unlawful shipments void.
- 579. Repealed.

WAGES OF SEAMEN

- 591. Commencement of wages.
- 592. Wages not dependent on freight earned.
- 593. Termination of wages by loss of vessel; transportation to place of shipment.
- 594. Right to wages in case of improper discharge.
- 595. Conduct as affecting right.

Sec.

- 596. Time for payment.
- 597. Payment at ports.
- 598. Vessels engaged in taking oysters.
- 599. Advances and allotments.
- 600. Agreements as to loss of lien or right to wages.
- 601. Attachment or arrestment of wages; support of seaman's wife.
- 602. Limit of sum recoverable during voyage.
- 603. Summons for nonpayment.
- 604. Libel for wages.
- 605. Wages payable in gold.

WAGES ON CANAL BOATS

- 611. Libel of canal boats for wages.

EFFECTS OF DECEASED SEAMEN

- 621. Duty of master where seaman dies during voyage.
- 622. Proceedings in regard to effects.
- 623. Penalty for neglect of master.
- 624. Duties of consular officers.
- 625. Effects of seaman dying within the United States.
- 626. Payment to district court.
- 627. Distribution by district court.
- 628. Unclaimed wages and effects.

DISCHARGE

- 641. Mode.
- 642. Accounting as to wages.
- 643. Continuous discharge book and certificate of identification.
 - (a) Issuance; form and contents
 - (b) Evidence of citizenship.
 - (c) Exhibition of discharge book or certificate before employment.
 - (d) Entries.
 - (e) Certificate of discharge; issuance; form and contents.
 - (f) Records of discharge books and certificates.
 - (g) Election to carry discharge book or certificate; penalty for discrimination because of.
 - (h) Loss of discharge book or certificate.
 - (i) Application to fishing or whaling vessels or yachts.
 - (j) Enforcement by Commandant of the Coast Guard.
 - (k) Performance of duties by collector, deputies, or masters.
 - (l) Report by master of employment or discharge of seaman not shipped or discharged before Coast Guard official.
- 643a. Same; exception as to unrigged vessels.
- 643b. Same; extension of section 643(l) to other vessels and waters in national interest.

Sec.

- 644. Rules for settlement.
- 645. Certificate of character.
- 646. Discharge of crews in coastwise trade.

PROTECTION AND RELIEF

- 651. Coast Guard official as arbiter.
- 652. Examination of witnesses.
- 653. Complaint that vessel is unseaworthy.
- 654. Proceedings on examination of vessel.
- 655. Refusal to proceed when vessel found seaworthy.
- 656. Appointment of inspectors by consul in foreign port.
- 657. Report of inspectors.
- 658. Discharge of crew on account of unseaworthiness; penalty for sending unseaworthy vessel to sea.
- 659. Payment of charges for inspection.
- 660. Refusal to pay wages and charges.
- 660—1. Space and accommodations for crew; hospital compartments.
- 660a. Inspection of crew quarters.
 - (a) Time and extent.
 - (b) Withdrawal of certificate of inspection; penalty.
- 660b. Same; exception as to unrigged vessels.
- 661. Neglect to provide sufficient stores.
- 662. Complaint as to provisions or water; examination.
- 663. Forfeiture for false complaint as to provisions or water.
- 664. Permission from master to enter complaint as to provisions or water.
- 665. Allowance for reduction of provisions.
- 666. Medicines.
- 667. Penalty for failure to keep medicines.
- 668. Weights and measures.
- 669. Clothing and heat.
- 670. Slop chests.
- 671. Same; vessels engaged in whaling or fishing business.
- 672. Requirements, qualifications, and regulations as to crews.
 - (a) Qualifications.
 - (b) Certificate of service as able seaman.
 - (c) Record of certificates of service.
 - (d) Muster of the crew on motion or information; rules and regulations; examination of applicant for certificate of service as able seaman; surrender of certificates; new certificates.
 - (e) Members of engine department.
 - (f) Rules as to certificates of service or efficiency.
 - (g) Certificates of service for other ratings.
 - (h) Suspension or revocation of certificates of service or efficiency.

Sec.

672. Requirements, qualifications, and regulations as to crews—
Continued

(i) Penalty for serving without certificate of service.

(j) Effect of section on other laws.

(k) Freedom of seamen unimpaired.

(l) Effective date of section.

672—1. Exception to section 672; certain sail vessels.

672—2. Same; certain persons as able seamen.

672a. Nationality of crews.

(a) Officers and pilots.

(b) Seamen.

(c) Vacancies on foreign voyage.

(d) Penalty for violating section.

672b. Exceptions to section 672; unriggered vessels, tugs, and tow-boats.

(a) Able seamen; rating.

(b) Service and rating equal to coal passer or wiper.

672b—1. Exception to section 672; seagoing barges.

672c. Definitions.

673. Requirements as to watches; duties of seamen; hours of work; penalty; right of seamen to discharge; effective date.

674. List of crew to be delivered to collector.

675. Certificate to list of crew; record.

676. Rules as to list of crew.

677. Production of copy of list on return of vessel; production of persons named.

678. Subsistence to destitute seamen; return to United States.

679. Transportation of destitute seamen to United States.

680. Rate for transportation of destitute seamen to United States on steam vessels.

681. Repealed.

682. Wages on discharge.

683. Penalty for neglect of consular officer to collect wages; incapacitated seaman.

684. Wages on discharge in case of sale.

685. Wages on justifiable complaint of seaman.

686, 687. Repealed.

688. Recovery for injury to or death of seaman.

689. Enforcement of sections 643, 660a, 672, 672a, 673, and 710a; rules and regulations.

690. Application of sections 643, 660a, 672, 672a, 673, 689, and 710a to fishing or whaling vessels or yachts.

691. Separability of sections 643, 660a, 672, 672a, 673, 689, and 710a.

692. Appropriation to carry out provisions of sections 643, 660a, 672, 672a, 673, 689, and 710a.

OFFENSES AND PUNISHMENTS

Sec.

- 701. Various offenses; penalties.
- 702. Entry of offense in log book.
- 703. Duty of consular officers as to insubordination.
- 704. Repealed.
- 705. Enforcement of forfeitures.
- 706. Disposal of forfeitures.
- 707. Appropriation of wages to costs of conviction.
- 708. Repealed.
- 709. Soliciting seamen as lodgers.
- 710. Carrying sheath knives.
- 710a. Repealed.
- 710b, 710c. Transferred.
- 711. Recovery of penalties and forfeitures.
- 712. Surrendering officer inflicting corporal punishment; liability of master.
- 713. Definitions, schedule, and tables.

SHIPPING COMMISSIONERS

§ 541. Appointment; accounts; expenditures; compensation; clerks

Historical Note

Codification. Section, R.S. § 4501; Acts June 26, 1884, c. 121, § 27, 23 Stat. 59; June 19, 1886, c. 421, § 1, 24 Stat. 79; Feb. 14, 1903, c. 552, § 10, 32 Stat. 829; Mar. 4, 1913, c. 141, § 1, 37 Stat. 736; June 10, 1921, c. 18, § 304, 42 Stat. 24, related to the appointment, accounts and

compensation of shipping commissioners and has been omitted from the Code, since the offices of shipping commissioners were abolished by 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097. See note under section 1 of this title.

Notes of Decisions

Coastwise vessels, seamen on 2
 Compensation in general 5
 Construction with other laws 1
 Court, jurisdiction and power 3
 Fees and expenses 4

1. Construction with other laws

The provisions of this section respecting payment of expenses of shipping commissioners other than for clerks were not repealed by section 331 of this title, abolishing payment of fees to shipping commissioners, and providing for payment of compensation to them and their clerks. U. S. v. Reed, N.Y.1897, 17 S.Ct. 921, 167 U.S. 664, 42 L.Ed. 317.

Section 544 of this title, providing that none of the provisions of certain sections of this title therein enumerated shall apply to sail or steam vessels engaged in the coastwise trade, with certain exceptions, when construed in connection with such enumerated sections, repealed so much of said enumerated sections relating to such vessels as was carried into such sections as originally enacted. U. S. v. Bain, C.C.Me.1880, 5 F. 192. See, also, U. S. v. Buckley, D.C.Cal.1887, 31 F. 804; U. S. v. King, C.C.Ala.1885, 23 F. 138.

2. Coastwise vessels, seamen on

This section did not apply to the shipping of seamen upon vessels engaged only in and for voyages coastwise be-

tween the Atlantic ports. *U. S. v. Smith*, Mass.1877, 95 U.S. 536, 5 Otto 536, 24 L.Ed. 517.

3. Court, jurisdiction and power

Rules and regulations prescribed by the court, governing the salaries and expenditures of the office of the shipping commissioner of the port of New York. *In re Accounts of Shipping Commissioner*, C.C.N.Y.1884, 85 F. 683.

District Court has no power to compel the shipping commissioner to pay over moneys to the government, its powers being supervisory rather than plenary. *In re Accounts of the Shipping Commissioner of the Port of New York*, C.C.N.Y.1884, 20 F. 211.

4. Fees and expenses

Under Act June 26, 1884, the compensation of the commissioner for the port of New York was fixed at a specified salary and one-half the surplus of fees collected, after payment of salaries and expenses of the office, not to exceed in all \$5,000 in any year; section 331 of this title abolished fees, but provided that commissioners theretofore paid, in whole or in part, by fees, should be paid the same compensation as they would have received prior to its passage; under the latter the commissioner was allowed and paid a salary of \$5,000, which amount he would have earned under the former Act, and he could not be required to pay from such salary the rent and other expenses incident to the maintenance of his office, but such expenses were a proper charge against the United States. *U. S. v. Reed*, N.Y.1897, 17 S.Ct. 921, 167 U.S. 664, 42 L. Ed. 317.

Under Act June 26, 1884, section 331 of this title as enacted originally, providing that the Secretary of the Treasury should "allow and pay . . . compensation" to such clerks, a shipping commissioner could not recover from the government the amount paid by him for

clerk hire after he was formally notified by the Secretary that his compensation would be limited to a certain amount per month, where it appeared that upon the presentation of his vouchers containing the claim for clerk hire they were approved only to the amount so limited. *U. S. v. Gunnison*, 1894, 15 S.Ct. 152, 155 U.S. 389, 39 L.Ed. 195.

Reasonable expenses of a shipping commissioner for office rent, storage of deceased seamen's effects, cost of removal from one office to another, stationery, telephone charges, etc., are valid charges against the United States, in addition to the commissioner's salary. *U. S. v. Reed*, N.Y.1894, 69 F. 841, 13 C.C.A. 682, affirmed 17 S.Ct. 919, 167 U.S. 664, 42 L. Ed. 317.

Shipping commissioner was entitled to fees for shipping seamen on vessel engaged in the carrying trade on a navigable river and such vessel was "engaged in the coastwise trade" under Act June 19, 1886. *Ravesies v. U. S.*, C.C.Ala.1889, 37 F. 447.

Under sections 541 et seq., of this title as enacted originally, the office expenses of a shipping commissioner were to come out of fees received, after which he might retain, as his emolument, \$5,000 per annum, the balance to be paid into the Treasury. *In re Shipping Com'r of Port of New York*, C.C.N.Y.1876, Fed. Cas.No. 12,792.

Should fees for shipping seamen on coasting vessels not within the exceptions of section 544 of this title, be received by a shipping commissioner they would not have to be accounted for to the Secretary of the Treasury, later the Secretary of Commerce, under this section. 1884, 18 Op.Atty.Gen. 54.

5. Compensation in general

Early cases on subject of compensation. *In re Shipping Com'rs*, C.C.N.Y. 1876, 13 Blatchf. 39, Fed.Cas.No. 12,792

§ 542. Bond and oath

Historical Note

Codification. Section, R.S. § 4502; Acts Apr. 26, 1906, c. 1875, 34 Stat. 137; Mar. 4, 1913, c. 141, § 1, 37 Stat. 736, related to the bonds and oaths of shipping commissioners and has been omitted because

of the abolishment, by 1946 Reorg.Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, of the offices of shipping commissioners. See note under section 1 of this title.

§ 542a. Demanding or receiving remuneration for supplying seamen for merchant vessels; penalty

Every Coast Guard official to whom the duties of shipping commissioner have been delegated and every clerk or employee in any shipping office, who demands or receives any remuneration whatever, either directly or indirectly, for hiring or supplying any seaman for any merchant vessels shall for every such offense be liable to a penalty of not more than \$200. R.S. § 4595; June 19, 1886, c. 421, § 1, 24 Stat. 79; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Derivation. Act June 7, 1872, c. 322, § 7, 17 Stat. 263.

Codification. Act June 19, 1886, abolished fees, and eliminated the words "excepting the lawful fees payable under this title" following the words "any merchant vessels" which appeared in R. S. § 4595.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive

Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

Reference to shipping commissioner was changed to Coast Guard official to whom the duties of shipping commissioner have been delegated on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Notes of Decisions

1. Violations

While a commissioner should not receive fees for shipping seamen on coasting vessels not within the exceptions of

section 544 of this title, yet he could not be prosecuted under this section for so doing. 1884, 18 Op. Atty. Gen. 54.

§ 543. When officers of customs shall act

In any port in which no Coast Guard official to perform the duties of shipping commissioner shall have been appointed, the whole or any part of the business of a shipping commissioner shall be conducted by the collector or deputy collector of customs of such port; and in respect of such business such customhouse shall be deemed a shipping office, and the collector or deputy collector of customs to whom such business shall be committed, shall, for all purposes, be deemed a Coast Guard official to whom the duties of shipping commissioner within the meaning of title 53 of the Revised Statutes have been delegated. R.S. § 4503; 1946 Reorg. Plan No. 3 §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Derivation. Act June 7, 1872, c. 322, § 8, 17 Stat. 263.

References in Text. Title 53 of the Revised Statutes, referred to in the text, was comprised of sections 4501-4612, of the Revised Statutes and is now contained in sections 542a, 543, 545, 546, 561, 562, 564-571, 574-578, 591-597, 600, 660, 661-669, 674-679, 682-685, 701-703, 705-707, 709, 710 and 711-713 of this title. Sections 4602 and 4606 of the Revised Statutes, which were formerly classified to sections 704 and 708 of this title were repealed. See notes under such former sections 704 and 708.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1850 Reorg.

Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4035, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

"Coast Guard official to perform the duties of," "Coast Guard official to whom the duties of" and "have been delegated" were inserted on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Notes of Decisions**1. Vessels within section**

This section does not apply to a British vessel. The Montapedia, D.C.La.1882, 14 F. 427.

§ 544. Vessels in coastwise trade

None of the provisions of sections 201-203, 542a, 543, 545, 546, 561, 562, 564-571, 574, 577, 578, 591-596, 600, 621-628, 641-643, 644, 645, 651, 652, 662-669, 701-709, 711, 713 of this title shall apply to sail or steam vessels engaged in the coastwise trade, except the coastwise trade between the Atlantic and Pacific coasts, or in the lake-going trade touching at foreign ports or otherwise, or in the trade between the United States and the British North American possessions, or in any case where the seamen are by custom or agreement entitled to participate in the profits or result of a cruise, or voyage. June 9, 1874, c. 260, 18 Stat. 64; Mar. 3, 1911, c. 231, § 291, 36 Stat. 1167.

Historical Note

References in Text. Sections 702 and 704 of this title, which are included in the reference in this section, were repealed by Act June 25, 1948, c. 645, § 21, 62 Stat. 862, effective Sept. 1, 1948, and are now covered by sections 2196 and 2279, respectively of Title 18, Crimes and Criminal Procedure.

Codification. Sections of this title enumerated in text of this section are those contained in the Shipping Commissioners' Act of June 7, 1872, c. 322, 17 Stat. 262.

Act Mar. 3, 1911 imposed upon the district courts the powers and duties formerly conferred upon circuit courts.

This affected the words "circuit courts" appearing in Act June 9, 1874, which words were from the title of another

Act referred to in said Act June 9, 1874, and translated in this section as "sections 201-203 * * * of this title".

Cross References

Shipment of crews for vessels in coastwise trade to be made at request of master or owner of such vessel, see section 583 of this title.

Notes of Decisions

Coastal trade, seamen in 3-5
 Fees for shipping 4
 Wages, attachment or garnishment 5
 Commissioner, power of 7
 Construction 1, 2
 Repeals 2
 Fees for shipping, coastal trade, seamen in 4
 Fishing and whaling voyages 8
 Lake-going trade 6
 Offenses and punishment 9
 Repeals, construction 2
 Shipping articles 10
 Wages, attachment or garnishment, coastal trade, seamen in 5

1. Construction

"This language is so broad and comprehensive that its effect must be to strike from the Revised Statutes every provision therein which was taken from the Act of 1872 (incorporated largely in this chapter) relative to such coastwise vessels; and their operation must be restricted to vessels sailing on long foreign voyages, or from the Atlantic to the Pacific coasts. All the regulations found in the Act of 1872 and transferred to the Revised Statutes relative to the shipment of crews, which might otherwise, perhaps, be applicable to coastwise voyages, are no longer in force." *U. S. v. Bain*, C.C.Me.1880, 5 F. 192.

This section should be read as though it provided that none of the provisions of the Shipping Commissioner's Act, sections 201-203, and 542a et seq. of this title, shall apply to vessels engaged in coastwise trade, or in the lake-going trade, touching at foreign ports or otherwise, or in the trade between the United States and the British North American possessions, or in any case where the seamen are by custom or agreement entitled to participate in the profits or result of a cruise, or voyage, with the single exception of the coastwise trade between the Atlantic and Pacific coasts. *Johnson v. Standard Oil Co. of New Jersey*, D.C.Md.1940, 33 F.Supp. 982.

The inclusion, in the United States Code (1926 ed.) of the 1874 Act, 18 Stat.

64, this section, rendering inapplicable 1872 statute, 17 Stat. 276, now section 601 of this title, exempting seamen's wages from garnishment, to wages of seamen engaged in coastwise trade, as well as inclusion of 1915 statute, 38 Stat. 1164, re-enacting the 1872 statute, did not have the effect of re-enacting the 1874 statute, since the Code was a mere compilation, *prima facie* setting out the laws as they then existed. *Waterman S. S. Corporation v. Brill*, 1942, 9 So.2d 23, 243 Ala. 25

2. — Repeals

Where Revised Statutes incorporated provisions of Shipping Commissioners' Act, sections 201-203, 542a, 543, 545, 546, 561, 562, 564-571, 574, 577, 578, 591-596, 600, 621-628, 641-643, 644, 645, 651, 652, 662-669, 701-709, 711, 713 of this title, but not this section, which was passed several days before adoption of Revised Statutes, this section survived adoption of Revised Statutes by virtue of R.S. § 5601 that all statutes enacted after December 1, 1873, the effective date of the revision, and prior to June 22, 1874, were to have full effect as if passed after the date of adoption. *Mahar v. Gartland S. S. Co.*, C.C.A.N.Y.1946, 154 F.2d 621.

This section repealed so much of former section 541 and other sections of this title, including section 701 of this title, as are composed of the provisions of Act June 7, 1872, former section 541 and other sections of this title, so far as said sections apply to vessels on the Great Lakes. *U. S. v. Bain*, D.C.Wis.1889, 40 F. 455.

The Revised Statutes, though adopted after the passage of this section, did not repeal its provisions. *U. S. v. Mason*, C.C.Cal.1888, 34 F. 129.

The effect of this section was to repeal with exceptions indicated, not only such provisions of Act June 7, 1872, former section 541, and other sections, of this title, as applied distinctively to vessels *eo nomine*, but also the other provisions relating to masters and owners, and their duties, and to seamen and apprentices, and their discipline; and seamen deserting from a coasting vessel plying between different California ports

were not liable to information therefor. *U. S. v. Buckley*, D.C.Cal.1887, 31 F. 804.

This section, if construed as repealing section 701 of this title, as to coasting voyages, has no effect on rights accruing before the repeal. *Scott v. Rose*, D. C.Mass.1874, Fed.Cas.No.12,545.

3. Coastal trade, seamen in

Where seaman was employed as second cook by articles signed at Texas City, Tex., for a voyage from there to Halifax, Nova Scotia, and such other ports, and places coastwise as the master might direct, and back to a final port of discharge in the United States, and after vessel arrived at Halifax the Neutrality Act, sections 441 et seq., of Title 22, was passed by Congress, and owner of vessel sold it to a foreign company, and voyage was terminated, and seaman was transported from Halifax to New York and paid off there, section 594 of this title, dealing with the right to wages in case of improper discharge did not apply because of this section, and hence seaman was not entitled to an additional month's wages and transportation to Texas City, Tex. *Johnson v. Standard Oil Co. of New Jersey*, D.C.Md.1940, 33 F.Supp. 982.

Seaman employed on tugboat plying in and about Hudson River and in its branches, the North River and East River, was engaged in "coastwise trade," and his wages were therefore not exempt from execution. *Gordon v. Blackton*, 1936, 186 A. 689, 117 N.J.L. 40, affirmed 191 A. 761, 118 N.J.L. 159, affirmed 58 S.Ct. 417, 303 U.S. 91, 82 L.Ed. 683.

4. — Fees for shipping

While a commissioner should not receive fees for shipping seamen on coasting vessels not within the exceptions of this section, yet he could not be prosecuted under section 542a of this title for so doing. 1884, 18 Op.Atty.Gen. 54.

Should fees for shipping seaman on coasting vessels not within the exceptions of this section be received by a shipping commissioner, they would not have to be accounted for to the Secretary of the Treasury (later Secretary of Commerce) under former section 541 of this title. Id.

5. — Wages, attachment or garnishment

This section did not exempt seamen engaged in coastwise traffic from forfeiture of wages for desertion. *Barfield v. Standard Oil Co. of New Jersey*, 1939, 44 N.Y.S.2d 627, 172 Misc. 95.

Under this section and section 601 of this title, wages of seamen engaged in ordinary coastwise trade are not subject to garnishment. *Waterman S. S. Corporation v. Brill*, 1942, 9 So.2d 23, 243 Ala. 25.

In view of this section exemption of seaman's wages from attachment given by section 601 of this title does not apply to seamen engaged in coastwise trade. *Duggar v. Mobile & Gulf Nav. Co.*, 1932, 140 So. 614, 140 Ala. 359.

6. Lake-going trade

Sections 574, 575, 713 of this title concerning merchant seaman and relating to shipping commissioners, shipment of crews, wages, protection, release and discharge of seamen, and the like are applicable to shipping on the Great Lakes. *Weaver v. Pittsburgh S. S. Co.*, C.C.A. Ohio 1946, 153 F.2d 597, certiorari denied 66 S.Ct. 1351, 328 U.S. 858, 90 L.Ed. 1630.

This section providing that none of the provisions of certain enumerated sections, which constitute the Shipping Commissioners Act of June 7, 1872, sections 201-203, and 542a et seq. of this title, shall apply to vessels in lake-going trade, is construable as meaning that none of the provisions of such sections apply to vessels in the lake-going trade. *Mahar v. Gartland S. S. Co.*, D.C.N.Y.1945, 62 F. Supp. 158.

A seaman employed on vessel engaged in trade on Great Lakes was not entitled, under section 596 of this title, to double wages for each day of delay in payment of wages earned, since provisions of said section for double wages for delay are not applicable to vessels engaged in lake-going trade. Id.

7. Commissioner, power of

In an action for the penalty for shipping seamen without authority, and demanding a remuneration therefor, it is for the defendant to show himself within the exception stated in this section. *U. S. v. Rose*, C.C.N.Y.1882, 12 F. 576.

A shipping commissioner has no authority to ship seamen on "sail or steam vessels engaged in the coastwise trade," unless such vessels come within the exceptions of this section, nor will the consent of the master and seaman operate to give such authority. 1884, 18 Op.Atty.Gen. 54.

8. Fishing and whaling voyages

Section 594 of this title was inapplicable to fishermen who entered into oral agreement for fishing venture on lay plan, requiring division of proceeds of

catch between ship owner and crew. *Old Point Fish Co. v. Haywood*, C.C.A. Va.1940, 109 F.2d 703.

The effect of this section was to take fishing and whaling voyages where the seamen receive as their compensation a share or lay in the catchings wholly out of the operation of the Act of June 7, 1872, sections 201-203, 542a et seq. of this title. *Ross v. Bourne*, D.C.Mass.1883, 14 F. 858, affirmed 17 F. 703. See, also, *U. S. v. Bain*, C.C.Me.1880, 5 F. 192; *Eddy v. O'Hara*, 1882, 132 Mass. 56.

9. Offenses and punishment

The provision of section 701 of this title, making desertion an offense, since the passage of this section, has no application to coasting vessels navigating between California ports. *U. S. v. Mason*, C.C.Cal.1888, 34 F. 129.

Under this section, sections 701-713 of this title, concerning "offenses and punishments," were rendered inapplicable to the crews of coasting vessels, and therefore a seaman was not liable to an indictment for a desertion, although legally shipped for a coastwise voyage and

bound by the articles to complete the voyage. *U. S. v. Bain*, C.C.Me.1880, 5 F. 192.

Under section 701 of this title punishing seamen who desert a ship by forfeiture of all or any part of wages which they have earned, desertion from vessels in the coastwise trade is punishable by forfeiture of wages. *Barfield v. Standard Oil Co. of New Jersey*, 1939, 14 N.Y.S.2d 627, 172 Misc. 95.

10. Shipping articles

Shipping articles were not void for noncompliance with sections 542a et seq. of this title, which was rendered inapplicable by this section. *Burdett v. Williams*, D.C.Conn.1886, 27 F. 113.

The effect of this section was to strike from former section 541 and other sections, of this title, every provision therein which was taken from the Act of June 7, 1872 relative to coastwise vessels, and therefore shipping articles for a coastwise voyage need not be signed by a seaman in the presence of a commissioner, master, consignee, or owner. *U. S. v. Bain*, C.C.Me.1880, 5 F. 192.

§ 545. Duties

The general duties of a Coast Guard official to whom the duties of shipping commissioner have been delegated shall be:

First. To afford facilities for engaging seamen by keeping a register of their names and characters.

Second. To superintend their engagement and discharge, in manner prescribed by law.

Third. To provide means for securing the presence on board at the proper times of men who are so engaged.

Fourth. To facilitate the making of apprenticeships to the sea service.

Fifth. To perform such other duties relating to merchant seamen or merchant ships as may be required by law. R.S. § 4508; 1946 Reorg.Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Derivation. Act June 7, 1872, c. 322, § 4, 17 Stat. 263.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with

power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1290, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred

to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

Reference to shipping commissioner was changed to Coast Guard official to

whom the duties of shipping commissioner have been delegated on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Cross References

Application of section to sail or steam vessels engaged in coastwise trade, see section 544 of this title.

Notes of Decisions

Generally 1
Discharge books 3
Employment of seamen 2

1. Generally

This section does not apply to a British vessel. *The Montapedia*, D.C.La.1882, 14 F. 427.

2. Employment of seamen

"The plaintiff's claim of a justiciable injury, as stated in the complaint and heretofore referred to, is in substance the alleged combination on the part of the defendants to restrain the freedom of the plaintiff and all other seamen on the Pacific Coast to engage in interstate and foreign commerce by compelling all seamen desiring to engage in such interstate and foreign trade and commerce to register and take a number, and take his turn for employment according to such number, which frequently prevents seamen of good qualifications and well known from obtaining employment at once, when, owing to their being well known among the masters and other officers of the vessels engaged in the trade aforesaid, and owing to their good qualifications as seamen, they could and would obtain work at once, and as a condition of such employment they also compel all seamen desiring to engage in the trade and commerce aforesaid to take and carry a book which plaintiff describes as a continuous discharge book, and which it appears will, when in use, contain particulars relating to a certificate of discharge and the identification of the individual carrying the book.

"Plaintiff alleges that the said regulations are humiliating to all seamen, and many of the best seamen refuse to abide by them and are leaving the seafaring calling, and plaintiff refuses to engage in

such commerce thereunder, and is suffering loss and damage because he cannot obtain employment without obeying such rules and regulations. There is no allegation in the complaint that plaintiff has ever applied for employment and been refused, and no allegation that plaintiff has ever suffered or will suffer any specific loss or damage whatever by reason of the regulation or acts of the defendants. The relief sought by the bill of complaint is a permanent injunction that the defendants be enjoined and restrained from requiring any seamen to either register in the said office (defendants' office) or carry or purchase the book complained of as a prerequisite to employment, or to obey any of the rules complained of as such prerequisite to obtaining employment in the interstate and foreign commerce mentioned.

"There is no complaint that the regulations are unfair or discriminatory as between seamen seeking employment, or that directly or indirectly the acts of the defendants result in any discrimination against the plaintiff or those whom he claims to represent. The whole complaint is that the seamen desiring such employment are required to register and take a number, and take their turn for employment according to such number. This regulation seems to be fair and reasonable and in the interest of a square deal. A similar system obtains in one form or another in many public or semi-public activities. In elections provisions for registration of voters are made in many, if not all, the states, for the purpose of requiring persons who are electors and who desire to vote to show that they have the necessary qualifications, by requiring registration as a condition precedent to the right of such electors to exercise the privilege of voting. *Bergevin v. Curtz*, 1898, 127 Cal. 86, 88, 59 P. 312. We are not aware that

any court has held that any citizen has suffered a justiciable injury by reason of such a regulation, nor are we aware that taking turn at a post office or theater window, or in a bread line, where food is being distributed to men, women, and children requiring such relief, has been held a just cause of complaint.

"Plaintiff insists, however, that the regulation is un-American. We think, on the contrary, that it is peculiarly American, and well adapted for the regulation of the business of shipping seamen. We agree with the court below that the services of the shipping commissioner under the Shipping Commissioners Act 'is not exclusive. Such bureaus may be maintained by either seamen or employers independently, and may render material assistance without impinging on either the letter or the spirit of the statute.' The complaint presents a case, therefore, in which there are a number of objections to the granting of an injunction against the acts of the defendants.

"The decision of the Supreme Court in *McCabe v. Atchison, Topeka & Santa Fé Ry. Co.*, Okl.1914, 235 U.S. 151, 162, 35 S.Ct. 69, 71, 59 L.Ed. 169, is a case in point. The court there said: 'It is an elementary principle that, in order to justify the granting of this extraordinary relief, the complainant's need of it, and the absence of an adequate remedy at law, must clearly appear. The complainant cannot succeed because some one else may be hurt. Nor does it make any difference that other persons, who may be injured, are persons of the same race or occupation. It is the fact, clearly established, of injury to the complainant—not to others—which justifies judicial intervention. *Williams v. Hagood*, S.C.1878, 98 U.S. 72, 74, 75, 25 L.Ed. 51; *Virginia Coupon Cases*, Va.1885, 5 S.Ct. 932, 962, 114 U.S. 325, 328, 329, 29 L.Ed. 205; *Tyler v. Judges*, Mass.1900, 21 S.Ct. 206, 179 U.S. 405, 406, 45 L.Ed. 252; *Turpin v. Lemon*, Va.1902, 23 S.Ct. 20, 187 U.S. 51, 60, 47 L.Ed. 70; *Davis & Farnum v. Los Angeles*, Cal.1908, 23 S.Ct.

498, 189 U.S. 207, 220, 47 L.Ed. 778; *Hooker v. Burr*, Cal.1904, 24 S.Ct. 706, 194 U.S. 415, 419, 48 L.Ed. 1046; *Braxton County Court v. West Virginia*, Va.1908, 28 S.Ct. 275, 208 U.S. 192, 197, 52 L.Ed. 450; *Collins v. Texas*, Tex.1912, 32 S.Ct. 286, 223 U.S. 288, 295, 296, 56 L.Ed. 439. * * * The desire to obtain a sweeping injunction cannot be accepted as a substitute for compliance with the general rule that the complainant must present facts sufficient to show that his individual need requires the remedy for which he asks.'

"We say here, as the court did there: 'The bill is wholly destitute of any sufficient ground for injunction and unless we are to ignore settled principles governing equitable relief, the decree must be affirmed.'

"The decree of the District Court in this case is accordingly affirmed." *Street v. Shipowners' Ass'n*, C.C.A.Cal.1924, 299 F. 5, certiorari denied 45 S.Ct. 95, 266 U.S. 611, 69 L.Ed. 467.

3. Discharge books

Shipping commissioner has no discretion in issuance of continuous discharge books to seamen, but it is the commissioner's duty to distribute them and to see that seamen have them before the articles they desire to enter into can be certified by the commissioner. *Johnson v. Rylander*, D.C.Cal.1937, 18 F.Supp. 689.

Regulation of Secretary of Commerce requiring seamen to produce continuous discharge book to shipping commissioner before signing articles of agreement was reasonable, authorized and valid. *Id.*

In view of valid regulation of Secretary of Commerce requiring seamen to produce continuous discharge book to Shipping Commissioner before signing articles of agreement, seamen were not entitled to mandatory injunction to force Shipping Commissioner to acknowledge and certify articles, regardless of whether seamen had continuous discharge books. *Id.*

§ 546. Penalty for personating shipping commissioner

Any person other than a Coast Guard official to whom the duties of shipping commissioner under title 53 of the Revised Statutes have been delegated, who shall perform or attempt to perform, either directly or indirectly, the duties which are by such title set forth as pertaining to a shipping commissioner, shall be liable to a penalty of not more than \$500. Nothing in such title, however, shall prevent the owner, or consignee, or master of any vessel except vessels

bound from a port in the United States to any foreign port, other than vessels engaged in trade between the United States and the British North American possessions, or the West India Islands, or the Republic of Mexico, and vessels of the burden of seventy-five tons or upward bound from a port on the Atlantic to a port on the Pacific, or vice versa, from performing, himself, so far as his vessel is concerned, the duties of shipping commissioner under title 53 of the Revised Statutes. Whenever the master of any vessel shall engage his crew, or any part of the same, in any collection district where no Coast Guard official to perform the duties of shipping commissioner shall have been appointed, he may perform for himself the duties of such commissioner. R.S. § 4504; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Derivation. Acts June 7, 1872, c. 322, §§ 8, 12, 17 Stat. 263, 264; Jan. 15, 1873, c. 35, 17 Stat. 410.

References in Text. For distribution of title 53, of the Revised Statutes, referred to in the text, of which this section is a part, see note under section 543 of this title.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government

Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

"Coast Guard official to whom the duties of shipping" and "have been delegated" were inserted in first sentence and "Coast Guard official to perform the duties of" was inserted in last sentence on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Cross References

Application of section to sail or steam vessels engaged in coastwise trade, see section 544 of this title.

Shipment by officials of crews for vessels engaged in the coastwise trade, etc., see section 563 of this title.

Notes of Decisions

Generally 2

Construction with other laws

Fees 3

Master or owner 4

Owner 4

1. Construction with other laws

This section qualifies section 641 of this title as to mode of discharge. U. S. v. French, C.C.Pa.1881, 9 F. 369.

2. Generally

On coastwise voyages between ports on the Atlantic, the shipping of seamen by a shipping commissioner is unnecessary. U. S. v. Smith, Mass.1877, 95 U. S. 536, 5 Otto 536, 24 L.Ed. 517.

This section does not apply to a British vessel. The Montapedia, D.C.La. 1882, 14 F. 427.

One, not a shipping commissioner, who engages seamen for a vessel of which he

is not the owner, consignee, or master, is liable to the penalties prescribed by this section. *U. S. v. Idell*, C.C.Pa.1872, Fed.Cas.No.15,436.

3. Fees

A person who is not a shipping commissioner is not authorized to charge any fee for shipping seamen. *U. S. v. Rose*, C.C.N.Y.1882, 12 F. 576.

4. Master or owner

Shipping articles of alien seamen for voyage from American to West Indian port and return, signed before captain, were valid. *The Ella Pierce* Thurlow, D.C.Va.1926, 18 F.2d 675.

As one of the duties of shipping commissioners is to grant certificates of discharge and good conduct, this section

confers on the master such authority. *In re Lind*, C.C.Cal.1911, 192 F. 209.

Under this section the master of a vessel making a coastwise voyage between Atlantic ports of the United States may act as shipping commissioner for the purpose of signing his own crew, and the contract so signed is valid and binding. *The William H. Clifford*, D.C.Pa. 1908, 165 F. 59.

This section authorizes the master, owner, or consignee of a ship about to make a voyage not mentioned in section 564 of this title, to be his own shipping commissioner; and this provision is not affected by sections 565 to 568 of this title. *The Grace Lothrop*, C.C.Mass.1874, Holmes, 342, Fed.Cas.No.5,663, affirmed 95 U.S. 527, 5 Otto 527, 24 L.Ed. 514.

§§ 547-549. Omitted

Historical Note

Codification. Sections have been omitted because of the abolishment, by 1946 Reorg.Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, of the offices of shipping commissioners to which they referred. See note under section 1 of this title.

Section 547, R.S. § 4505, related to employment and duties of clerks for shipping commissioners.

Section 548, R.S. § 4506, related to seals of shipping commissioners and the effect as evidence of instruments signed and sealed by them.

Section 549, R.S. § 4507; Act Mar. 3, 1897, c. 389, § 1, 29 Stat. 637, related to the furnishing of office space and supplies for shipping commissioners.

SHIPMENT OF CREW

Decisions Relating to Merchant Seamen Generally

Congress, power of 1

Contract

Performance 7

Termination 8

Crew, persons constituting 4

Discharge 9

Employment and discharge 9

Law governing 2

Officers, authority and rank 5

Performance of contract 7

Seamen to whom chapter applicable 3

Services, nature of 6

Termination of contract 8

1. Congress, power of

Congress has the right to prescribe rules which shall govern vessels and sailors while within the jurisdiction of the United States, notwithstanding the vessels are foreign craft, and the sailors alien persons. *The Ixion*, D.C.Wash. 1918, 237 F. 142.

2. Law governing

Where alien shipped on foreign ship under flag of foreign nation, the presumption is that his contract was valid under the law of such nation and that it is to be construed thereby. *Transportes Maritimos Do Estado v. Almeida*, C.C.A. N.Y.1925, 5 F.2d 151, transferred 44 S. Ct. 449, 265 U.S. 104, 68 L.Ed. 933.

When an American citizen signs articles as a seaman on a British ship, he assumes a temporary allegiance to the flag under which he serves, and his rights while in such service are governed by British and not by American law. *Rainey v. New York & P. S. S. Co.*, C. C.A.Wash.1914, 216 F. 449, certiorari denied 35 S.Ct. 209, 235 U.S. 704, 59 L.Ed. 433.

The laws of the United States follow seamen engaged on its vessels until the voyage is completed, whether in a for-

foreign country or here. *Roberts v. Skolfield*, D.C.Me.1858, Fed.Cas.No.11,917.

3. Seamen to whom chapter applicable

The sections for the regulation of seamen in this chapter exclusively apply to seamen engaged in the merchant service of the United States. *Grant v. U. S.*, Or.1893, 58 F. 694, 7 C.C.A. 436. See, also, *U. S. v. Sullivan*, C.C.Or.1890, 43 F. 602; *The Montapedia*, D.C.La.1882, 14 F. 427; *U. S. v. Kellum*, C.C.N.Y.1881, 7 F. 843; *U. S. v. McArdle*, D.C.Or.1873, 2 Sawy. 367, Fed.Cas.No.15,653; *U. S. v. Anderson*, C.C.N.Y.1872, 10 Blatchf. 226, Fed.Cas.No.14,447; *Ex parte D'Oliviera*, C.C.Mass.1913, 1 Gall., U.S., 474, Fed.Cas. No.3,967.

Sections of this chapter are not applicable to foreign vessels. *U. S. v. Minges*, C.C.S.C.1883, 16 F. 657. See, also, *The Montapedia*, D.C.La.1882, 14 F. 427; *U. S. v. Kellum*, C.C.N.Y.1881, 7 F. 843.

Act June 7, 1872, c. 322, 17 Stat. 262 from which the sections of this chapter are derived, apply as well to vessels engaged in the coastwise trade as to those engaged in the foreign trade. *U. S. v. Idell*, C.C.Pa.1872, Fed.Cas.No.15,436.

A vessel used to carry supplies to Alaska and fish therefrom was a "merchantman," a ship or vessel employed in foreign or domestic commerce and in the merchant service being a "merchantman", and hence both the owner and master were subjected to the shipping regulations provided by section 541 et seq. of this title, and seamen were protected in their rights by such sections. *Heino v. Libby, McNeill & Libby*, 1921, 205 P. 854, 116 Wash. 148.

Seamen born in the Philippine Islands, being persons whose civil and political status is by the treaty of Paris, which is the latest expression of the supreme law of the land, declared to be a matter for future determination by Congress, are not citizens of the United States within the meaning of any statutes concerning seamen or any other statute or law of the United States, and from the standpoint of our government they are not citizens of the United States in any sense, but they are persons who are not subjects of any foreign power, and are, from an international standpoint, subjects of the United States, or, to use a term that has been suggested, "nationals." 1901, 23 Op.Atty.Gen. 402.

All persons shipped in the United States on an American vessel have been, according to the practice of the government, treated as entitled to relief under

the laws relating to seamen. 1901, 23 Op.Atty.Gen. 400.

A Puerto Rican engaged in the occupation of a seaman in the American merchant marine, including that of Puerto Rico, is an American seaman within the meaning of the statutes relating to the relief of American seamen, but the contrary, however, is true of seamen born in the Philippine Islands, and of Cuban seamen. *Id.*

Act June 7, 1872, c. 322, 17 Stat. 262 from which the sections of this chapter are derived, had no application to seamen employed on vessels engaged in the service of the coast and geodetic survey. 1888, 19 Op.Atty.Gen. 182.

4. Crew, persons constituting

By "crew" of vessel, those persons are naturally and primarily meant who are on board her aiding in her navigation without reference to the nature of the arrangement under which they are on board. *The Buena Ventura*, D.C.Mass. 1917, 243 F. 797.

The crew of a vessel, in a general sense, comprises all persons who, in pursuance of some contract or arrangement with the owner or master, are on board the same, aiding in the navigation thereof without regard to whether the contract is verbal or in writing, or for a long or short voyage or period. *The Marie*, D.C.Or.1892, 49 F. 236.

One who secretes himself on board before sailing, and discovers himself after the vessel is at sea, is not one of the crew, though the master requires him to work, as a condition of his having food, and he does work. *U. S. v. Small*, C.C.Mass.1855, Fed.Cas.No.16,314.

A deserting seaman, who secretes himself on board after another is shipped in his place, may be required to perform seaman services. *Allen v. Hallet*, D.C.N.Y.1849, Fed.Cas.No.223.

Wherever in a statute the words "master and crew" occur in connection with each other, the word "crew" embraces all the officers as well as the common seamen. *U. S. v. Winn*, C.C.Mass.1833, 3 Sumn. 209, Fed.Cas.No.16,740.

5. Officers, authority and rank

The ship's carpenter ranks with an ordinary seaman, and is subject to the orders of the second mate. *Sheridan v. Furbur*, D.C.N.Y.1834, Fed.Cas.No.12,761.

6. Services, nature of

The removal of ballast from a foreign vessel, while in port, for the purpose or

putting her in condition to receive cargo for an intended voyage, constitutes a maritime service. *Roberts v. The Windermere*, D.C.N.Y.1880, 2 F. 722.

Where a contract of service is for the navigation of tide waters, and laying stone on wharves is incidental thereto, the whole service is maritime, but if the navigation is merely incidental and subsidiary to some other business, which is not maritime, the contract as a whole will not be maritime. *The Canton*, D. C.Mass.1858, Fed.Cas.No.2,388.

A mariner's services will be deemed maritime if substantially performed on waters within the ebb or flow of the tide. *The D. C. Salisbury*, D.C.N.Y.1844, Fed.Cas.No.3,694.

7. Contract—Performance

Cook may be required to perform service as seaman so far as he is able. *Allen v. Hallet*, D.C.N.Y.1849, Fed.Cas.No. 223.

A contract for a voyage to different ports in the Pacific and back to the United States, or for a period of 18 months, is not fulfilled on the ship's part by lapse of the term, where the seaman is left abroad in a hospital, without means or opportunity to return. *Nevitt v. Clarke*, D.C.N.Y.1846, Fed.Cas.No.10, -128.

8. — Termination

Where period for which seaman signed expired before vessel reached United States port, without fault of vessel, master, or owner, seamen were bound to continue services until vessel reached appropriate discharge port, and, having refused, were not entitled to return transportation, wages, or maintenance after leaving ship. *Uriarte v. U. S.*, D.C.N.Y.1926, 14 F.2d 164.

Where libelants were employed as hands on a steamboat on a trip from Pittsburg to Cincinnati and back and they had nothing to do with the navigation of the boat, but the handling of the cargo was part of their employment, they had no right to quit the boat as soon as she was fastened to the wharf at Pittsburg, but it was their duty to remain and assist in unloading her cargo. *The Hudson*, D.C.Pa.1881, 6 F. 830.

If the seaman abandons the ship by consent of the master, such mutual agreement annuls the shipping contract between them, and the seaman cannot af-

terward reclaim his place on board the ship, and the master may be subject to penalties or the ship to a charge of extra wages by positive law, for abandoning or leaving a seaman in a foreign port, but this does not reinstate the shipping contract. *The Philadelphia*, D. C.N.Y.1845, Olc.Adm. 216, Fed.Cas.No.11, -084.

Whether seamen are bound to remain after the end of a voyage to assist in discharging the cargo depends on the custom of the port. *The Mary*, D.C.Me. 1835, Fed.Cas.No.9,191. See, also, *The Annie M. Smull*, D.C.Or.1872, Fed.Cas.No. 423.

The voyage is not ended until the cargo and ballast are discharged. *Ex parte Sprout*, C.C.Dist.Col.1807, Fed.Cas.No.13, -267.

Relation of master and servant, though suspended during shore leave, was revived on sailor's return to entrance gate and demanding admittance. *Holliday v. Merchants' & Miners' Transp. Co.*, 1926, 132 S.E. 210, 161 Ga. 949.

9. Employment and discharge

Though right of master to demote mate on voyage, in absence of approval of consul of ship's country, may be questioned, action was reasonable, where mate had been injured. *The Rosemary*, D.C.Va.1925, 9 F.2d 980, affirmed 9 F.2d

The master virtute officii employs and discharges seamen. *Hughes v. Southern Pac. Co.*, D.C.N.Y.1918, 274 F. 876.

Seamen may be discharged at the inception of the voyage for failure to provide themselves with clothing and bedding suitable for the voyage. *The George Burnham*, D.C.Me.1872, Fed.Cas. No.5,331.

The owners are bound by the acts of the master, and when the master had arrested and imprisoned the crew on a criminal charge, before the voyage was ended, and when one of the crew had been discharged on a hearing before the magistrate from the criminal complaint and the others had been committed to prison and were awaiting trial, and no orders of the master had been given that such prisoners should return to duty when discharged, this worked a discharge of the crew from the vessel and absolved the relationship of master and seaman. *Hill v. The Brig Triumph*, D. C.N.Y.1841, 2 N.Y.Leg.Obs. 115, Fed.Cas. No.6,500.

§ 561. Apprentices

Every Coast Guard official to whom the duties of shipping commissioner appointed under title 53 of the Revised Statutes have been delegated shall, if applied to for the purpose of apprenticing boys to the sea service, by any master or owner of a vessel, or by any person legally qualified, give such assistance as is in his power for facilitating the making of such apprenticeships; but such Coast Guard official shall ascertain that the boy has voluntarily consented to be bound, and that the parents or guardian of such boy have consented to such apprenticeship, and that he has attained the age of twelve years, and is of sufficient health and strength, and that the master to whom such boy is to be bound is a proper person for the purpose. Such apprenticeship shall terminate when the apprentice becomes eighteen years of age. Such Coast Guard official shall keep a register of all indentures of apprenticeship made before him. R.S. § 4509; 1946 Reorg.Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Derivation. Act June 7, 1872, c. 322, § 9, 17 Stat. 263.

References in Text. For distribution of title 53 of the Revised Statutes, of which this section is a part, see note under section 543 of this title.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg.Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury De-

partment but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

References to shipping commissioner were changed to Coast Guard official to whom the duties of shipping commissioner have been delegated on authority of 1946 Reorg.Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Minimum Age (Sea) Convention (Revised) 1936. Minimum Age (Sea) Convention (Revised) 1936, which provides for minimum age of apprentices of 15 years, see 54 Stat. Pt. 2, 1705.

Cross References

Application of section to sail or steam vessels engaged in the coastwise trade, see section 544 of this title.

Notes of Decisions

1. Generally

This section does not apply to a British vessel. *The Montapedia*, D.C. La.1882, 14 F. 427.

§ 562. Indenture of apprentice to be produced to commissioner

The master of every foreign-going vessel shall, before carrying any apprentice to sea from any place in the United States, cause such apprentice to appear before the Coast Guard official to whom the duties of shipping commissioner have been delegated before whom the crew is engaged, and shall produce to him the indenture by which such apprentice is bound, and the assignment or assignments thereof if any; and the name of the apprentice, with the date of the indenture and of the assignment or assignments thereof, if any, shall be entered on the agreement; which shall be in the form as near as may be given in the table marked "A" in the schedule annexed to this chapter, and no such assignment shall be made without the approval of such Coast Guard official, of the apprentice, and of his parents or his guardian. For any violation of this section, the master shall be liable to a penalty of not more than \$100. R.S. § 4510; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Derivation. Act June 7, 1872, c. 322, § 10, 17 Stat. 264.

References in Text. For table "A" in schedule referred to in the text, see section 713 of this title.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard,

referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

References to shipping commissioner were changed to Coast Guard official to whom the duties of shipping commissioner have been delegated and to such Coast Guard official or authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Cross References

Application of section to sail or steam vessels engaged in coastwise trade, see section 544 of this title.

Notes of Decisions

1. Generally

This section does not apply to a British vessel. *The Montapedia*, D.C.La. 1882, 14 F. 427.

§ 563. Shipment of crews; shipping agreements

Coast Guard officials to whom the duties of shipping commissioners have been delegated may ship crews for any vessel engaged in the coastwise trade, or the trade between the United States and the Dominion of Canada, or Newfoundland, or the West Indies, or the Republic of Mexico, at the request of the master or owner of such vessel.

When a crew is shipped by such Coast Guard official for any American vessel in the coastwise trade, or the trade between the United States and the Dominion of Canada, or Newfoundland, or the West Indies, or Mexico, as authorized by this section, an agreement shall be made with each seaman engaged as one of such crew in the same manner as is provided by sections 564 and 565 of this title, not however including the sixth and eighth items of section 564 of this title, and such agreement shall be posted as provided in section 577 of this title, and such seaman shall be discharged and receive their wages as provided by the first clause of section 596 of this title, and also by sections 593-595, 597, 600, 603, 604, 625-628, 641-643, 644, 645 and 651 of this title; but in all other respects such shipment of seamen and such shipping agreement shall be regarded as if both shipment and agreement had been entered into between the master of a vessel and a seaman without going before such Coast Guard official: *Provided*, That the clothing of any seaman shall be exempt from attachment, and that any person who shall detain such clothing when demanded by the owner shall be deemed guilty of a misdemeanor, and shall be imprisoned not more than six months or fined not more than \$500, or both. June 19, 1886, c. 421, § 2, 24 Stat. 80; Aug. 19, 1890, c. 801, 26 Stat. 320; Feb. 18, 1895, c. 97, 28 Stat. 667; Mar. 3, 1897, c. 389 § 8, 29 Stat. 689; Apr. 11, 1904, c. 1140, 33 Stat. 168; 1946 Reorg. Plan No. 3 §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Codification. The first paragraph of this section is from Act June 19, 1886. The original text provided that commissioners might "ship and discharge crews," etc. which is set forth in section 646 of this title.

The original text also contained a provision that shipping and discharging fees should be one-half that prescribed by R.S. § 4612, for the purpose of determining the compensation of shipping commissioners. Section 1 of said Act of 1886, discontinued the collection of such fees, but provided for payment of such compensation as the officers affected would have received prior to the passage of the Act. As shipping commissioners were not then receiving fees, but compensation fixed by the Secretary of the

Treasury, under former section 541 of this title, that obsolete provision of the original text was evidently designed to aid him in fixing such compensation.

Second paragraph of this section is from Act Aug. 19, 1890, as amended.

That Act originally read substantially as set forth in this section, down to and including the words, "as is provided by sections four thousand five hundred and eleven and four thousand five hundred and twelve of the Revised Statutes" [sections 564 and 565 of this title] continuing to the end as follows; "for the shipment of the crews of other vessels; and the provisions of sections forty-five hundred and twenty-two, forty-five hundred and twenty-four, forty-five hundred and twenty-five, forty-five hun-

dred and twenty-six, forty-five hundred and twenty-seven, forty-five hundred and twenty-eight, forty-five hundred and fifty-four, forty-five hundred and ninety-six, forty-five hundred and ninety-seven, forty-five hundred and ninety-eight, forty-five hundred and ninety-nine, forty-six hundred and one, forty-six hundred and two, forty-six hundred and three, forty-six hundred and four, forty-six hundred and five, forty-six hundred and ten, and forty-six hundred and twelve of the Revised Statutes shall extend to and embrace such vessels in the coastwise trade and the trade between the United States and the Dominion of Canada, or Newfoundland, or the West Indies, or Mexico, where their crews have been shipped by a shipping commissioner, to the same extent and with the same force and effect as if said vessels had been mentioned and embraced in the language and terms of said sections."

The original text of that part of the second paragraph commencing with the words "and also by sections" referred to R.S. §§ 4526-4528, 4530, 4535, 4536, 4542-4547, 4549-4554, and 4802. R.S. § 4536 was repealed by Act Mar. 4, 1915, c. 153, § 12, 38 Stat. 1169. The other sections mentioned were carried into the sections of this title mentioned in the text as above set forth.

Act Feb. 18, 1895, substituted, instead of the part of the section last quoted, the provisions beginning with the words "not however including the sixth," etc., to the end of the section substantially as set forth, except for subsequent changes hereinafter mentioned.

Act Mar. 3, 1897, struck out, after the words "not however including the sixth," the word "seventh", and after the words "four thousand five hundred and fifty-four" [section 651] inserted the

words "and four thousand six hundred and two" [former section 704 of this title].

Act April 11, 1904, changed the words, in the last proviso, "shall be liable to a penalty of not exceeding one hundred dollars," to read, "shall be deemed guilty of a misdemeanor, and shall be imprisoned not more than six months or fined not more than five hundred dollars, or both."

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

References to shipping commissioner were changed to Coast Guard official to whom the duties of shipping commissioner have been delegated and to such Coast Guard official or authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Notes of Decisions

Generally 2

Clothing, attachment or detention,
men 5

Fees 4

Purpose 1

Clothing, attachment or detention 5

Wages 6

Vessels within section 3

Wages, seamen 6

A. Purpose

The first paragraph of this section was not mandatory and did not require sea-

men to ship before a shipping commissioner, however, it was deemed advisable that if the master or crew, from motives of convenience or otherwise, should desire to ship before a shipping commissioner, they should be able to do so; and it was for this reason that the authority of the shipping commissioner was thus enlarged. The J. D. Peters, D.C. Cal. 1896, 78 F. 368.

The purpose of Act Feb. 18, 1895, was undoubtedly to repeal certain sections of the Revised Statutes imposing penalties and forfeitures on merchant seamen, so far as the same had been made

applicable to seamen engaged in the coastwise trade by the Act of 1890, and to extend to them the beneficial provisions of certain other sections mentioned in such Act of 1895. Id.

2. Generally

This section is permissive only and it is not necessary that shipping articles be signed before a Commissioner. The Sharon, D.C.Va.1931, 52 F.2d 481.

The last clause of this section prior to the proviso preserves to master and seamen the right to enter into such contractual relations not otherwise provided by the sections of this title made applicable to seamen shipping in the coastwise trade, and not contrary to law. The J. D. Peters, D.C.Cal.1896, 78 F. 368.

3. Vessels within section

Act Aug. 19, 1890, c. 801, makes section 564 of this title applicable to a vessel bound on a voyage from San Francisco to Clipperton Island, off the coast of Mexico, and thence to San Diego, Cal., and on two other voyages between San Diego and Clipperton Island, and upon their completion return to the port of San Francisco. The Alice Blanchard, D.C.Cal.1899, 92 F. 519.

A vessel engaged in the carrying trade on a navigable river is "engaged in the coastwise trade" within the meaning of this section and the shipping commissioner is entitled to fees for shipping seamen on such vessel. *Ravesies v. U. S.*, C.C.Ala.1889, 37 F. 447.

4. Fees

Shipping commissioner is entitled to fees for shipping seamen on vessel engaged in the carrying trade on a navigable river, and such vessel is "engaged in the coastwise trade" under Act June 19, 1886. *Ravesies v. U. S.*, C.C.S.D.Ala.1889, 37 F. 447.

A shipping commissioner is not entitled to fees for shipping and discharging crews under this section. *Gunnison v. U. S.*, 1891, 26 Ct.Cl. 382, reversed on other grounds 15 S.Ct. 152, 155 U.S. 389, 39 L.Ed. 195.

5. Seamen—Clothing, attachment or detention

A civil action and not an information in a criminal case is the proper proceeding to recover a penalty for violating the provision as to the detention of seamen's clothing. *U. S. v. Younger*, D.C.Wash. 1899, 92 F. 672.

The value of the seaman's clothing, detained by the master, may be recovered in the same libel with a claim

for a wrongful discharge. *Hutchinson v. Coombs*, D.C.Me.1825, Fed.Cas.No.8-955.

6. — Wages

By Act February 13, 1895, Act August 19, 1890, was so revised and amended as to exempt vessels in the coastwise trade (except between ports on the Atlantic and ports on the Pacific) and vessels engaged in trade between the United States and Canada from the requirements of sections 201 et seq. of this title as to keeping official log books, hence the wages of seamen deserting from such vessels may be adjudged forfeited without any proof that they were ever noted in the log book as deserters. *The Victorian*, D.C.Wash.1898, 88 F. 797.

Section 599 of this title, permitting a seaman to stipulate in his shipping agreement before a shipping commissioner for an allotment of wages to a creditor, was by implication repealed by Act Feb. 18, 1895, providing that the shipping agreement made before a shipping commissioner for a coastwise voyage shall not include the clause relating to an allotment of wages, and where such an allotment is made it is invalid, and money paid under it cannot be deducted from the seaman's wages. *Grossett v. Townsend*, Cal.1898, 89 F. 908, 30 C.C.A. 457.

Act Feb. 18, 1895, providing for the omission of item No. 8 of section 564 of this title relating to allotment of wages, in its application to the form and contents of shipping articles in the coastwise trade, did not repeal, by implication, the positive enactments of section 599 of this title permitting allotments. *Hogan v. The J. D. Peters*, D.C. Cal.1896, 78 F. 368.

In an admiralty proceeding by seamen against a vessel for wages claimed to be due them, the failure to have inserted in the shipping articles, before they were executed before a United States shipping commissioner, the time each seaman was to be on board to begin work, in violation of section 564 of this title, as amended by this section, and of sections 565, 576, and 591 of this title will justify a decision in favor of libelants, where the testimony is evenly balanced as to the time the men were required to be on board. *The Shetland v. Johnson*, 1903, 21 App.D.C. 416.

Under sections 564, 565, 576 and 591 of this title it is not competent for the master to fill up blank spaces left in the shipping articles, so as to bind the seaman, as such articles constitute a contract for wages. Id.

§ 564. Shipping articles

The master of every vessel bound from a port in the United States to any foreign port other than vessels engaged in trade between the United States and the British North American possessions, or the West India Islands, or Mexico, or of any vessel of the burden of seventy-five tons or upward, bound from a port on the Atlantic to a port on the Pacific, or vice versa, shall, before he proceeds on such voyage, make an agreement, in writing or in print, with every seaman whom he carries to sea as one of the crew, in the manner herein-after mentioned; and every such agreement shall be, as near as may be, in the form given in the table marked A, in the schedule annexed to this chapter, and shall be dated at the time of the first signature thereof, and shall be signed by the master before any seaman signs the same, and shall contain the following particulars:

First. The nature and, as far as practicable, the duration of the intended voyage or engagement, and the port or country at which the voyage is to terminate.

Second. The number and description of the crew, specifying their respective employments.

Third. The time at which each seaman is to be on board, to begin work.

Fourth. The capacity in which each seaman is to serve.

Fifth. The amount of wages which each seaman is to receive.

Sixth. A scale of the provisions which are to be furnished to each seaman.

Seventh. Any regulations as to conduct on board, and as to fines, short allowance of provisions, or other lawful punishments for misconduct, which may be sanctioned by Congress or authorized by the Commandant of the Coast Guard not contrary to or not otherwise provided for by law, which the parties agree to adopt.

Eighth. Any stipulations in reference to advance and allotment of wages, or other matters not contrary to law. R.S. § 4511; Mar. 3, 1897, c. 389, § 19, 29 Stat. 691; Feb. 14, 1903, c. 552, § 10, 32 Stat. 829; Mar. 4, 1913, c. 141, § 1, 37 Stat. 736; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Derivation. Acts June 7, 1872, c. 322, § 12, 17 Stat. 264; Jan. 15, 1873, c. 35, 17 Stat. 410.

References in Text. For table "A" in schedule referred to in the text, see section 713 of this title.

Codification. Act Mar. 3, 1897 amended R.S. § 4511 to read, substantially, as above set forth. As enacted originally that part of the seventh paragraph

following the words "sanctioned by Congress" read "as proper to be adopted, and which the parties agree to adopt."

Act Feb. 14, 1903, substituted "Secretary of Commerce" for "Secretary of the Treasury".

Act Mar. 4, 1913 provided that the Secretary of Commerce and Labor should be called the Secretary of Commerce.

Repeals. Paragraph Eighth of this section was repealed, in so far as it related to the domestic trade as defined in section 701 of this title, by Act Dec. 21, 1898, c. 28, § 25, 30 Stat. 764. See section 701 of this title and note thereunder.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Ex-

ecutive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

"Commandant of the Coast Guard" was substituted for "Secretary of Commerce" on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Cross References

Application of this section to sail or steam vessels engaged in coastwise trade, see section 544 of this title.

Shipping agreements for trade with Canada, Newfoundland, West Indies or Mexico to be made with crew as provided in this section, see section 563 of this title.

Voyage or term for which seaman may be shipped and reshipment, see sections 572, 573 of this title.

Notes of Decisions

Generally 4
Blank spaces in articles 3
Bonus, wages 20
Collective bargaining 26
Construction of section 1, 2
Repeals 2
Construction of shipping articles
Generally 6
Vagueness 7
Crew members 10
Deviation from route 17
Duration of voyage
Generally 13
Particular cases 14
Illness or injury, wages 21
Injury, wages 21
Insurance 23
Minors, contracts of 27
Nature of voyage
Generally 11
Particular cases 13
Overtime wages 22
Parole agreements 9
Profits or earnings, share in wages 23
Purpose 3
Rating of seaman 13
Repeals, construction of section 2
Review 29
Signing of articles 10
Termination of voyage
Generally 15
Particular cases 16
Transportation 25

Vagueness, construction of shipping articles 7
Vessels within section 5
Wages 19-24
Generally 19
Bonus 20
Illness or injury 21
Injury 21
Overtime 22
Particular cases 24
Profits or earnings, share in 23

1. Construction of section

The legislation embraced in this and related sections, designed for the amelioration of American maritime commerce, providing as it does for the avoidance of shipping articles and for penalties for its neglect, must be strictly construed. The *Elswick Tower*, D.C.Ga.1917, 241 F. 706.

It is evident from a consideration of the various statutes, that in providing in section 563 of this title that items 6, 7, and 8 should be omitted from this section, in its applicability to the shipping agreement, Congress deemed this section, so far as items 6, 7, and 8 were concerned, obsolete, unnecessary, and superfluous legislation. The *J. D. Peters*, D.C.Cal.1896, 78 F. 368.

2. — Repeals

Congress in providing by section 563 of this title, for the omission of item No. 8 of this section, in its application to the form and contents of the shipping agreement in the coastwise trade, did not repeal the positive enactments permitting allotments contained in section 599 of this title. *The J. D. Peters*, D.C. Cal.1896, 78 F. 368.

Section 574 of this title requiring a written contract on the shipment of seamen is not repealed by this section. *The City of Mexico*, D.C.N.Y.1873, Fed. Cas.No.2,756, affirmed Fed.Cas.No.14,797.

3. Purpose

Provision of this section requiring that seamen sign shipping articles at beginning of each voyage and sign off articles at its conclusion was intended for protection of seamen, and was not intended to forbid parties from mutually undertaking to assure the crew right to continue as employees and to re-sign if it desired after signing off articles at end of voyage. *Southern S. S. Co. v. National Labor Relations Board*, C.C.A. 1941, 120 F.2d 505, reversed on other grounds 62 S.Ct. 886, 316 U.S. 31, 86 L. Ed. 1246.

The purpose of this section "was to provide what the shipping articles or agreement should contain, and the section was imperative in its demand that it should state, among other things, 'any stipulations in reference to advance and allotment of wages, or other matters not contrary to law.' Obviously, it simply related to the form and contents of the shipping agreement. It did not purport to provide what the law should be with reference to the several particulars required to be stated in the shipping agreement." *The J. D. Peters*, D.C.Cal. 1896, 78 F. 368.

4. Generally

Shipping articles constitute a several contract with each seaman. *Oliver v. Alexander*, Md.1832, 81 U.S. 143, 6 Pet. 143, 145, 8 L.Ed. 349.

Shipping articles constitute the "contract of employment" by which ship and crew are bound. *The Seatrain New Orleans*, C.C.A.La.1942, 127 F.2d 878. See, also, *Mason v. Texas Co.*, D.C.Mass.1948, 76 F.Supp. 318, affirmed 171 F.2d 559, certiorari denied 69 S.Ct. 1156, 337 U.S. 915, 93 L.Ed. 1725.

Shipping articles are individual contracts between owners of vessels and the crew, terminable in home ports at will of either at the end of any voyage.

Peninsular & Occidental S. S. Co. v. National Labor Relations Board, C.C.A. 1938, 98 F.2d 411, certiorari denied 59 S. Ct. 248, 305 U.S. 653, 83 L.Ed. 423.

It is only when a given stipulation of their general contract of employment signifies such improvidence or ignorance on the part of the seamen as to make its enforcement unreasonable, or is such as contravenes a settled policy of the law maritime, that it will be considered void and without obligatory force. *McDonald v. U. S.*, C.C.A.N.Y.1923, 292 F. 593.

Inherent in the shipping articles of seamen is the absolute obligation of the owners and operator to see that the vessel was seaworthy; that is, she must be tight, staunch, and strong, and so equipped and the cargo so stored as to resist all ordinary action of the sea, but it is not necessary that she be in perfect condition or equipped with the most improved appliances. *Hamilton v. U. S.*, C. C.A.Va.1920, 268 F. 15, certiorari denied 41 S.Ct. 15, 254 U.S. 645, 65 L.Ed. 454.

Seizure of vessel under libel breaks up articles of seamen, and no lien attaches while vessel is custodia legis. *The Pacific Hemlock*, D.C.Wash.1932, 3 F.Supp. 305.

The reasonableness and equity of an agreement between owners and seamen will always be examined by the court. *The Lucy Anne*, D.C.Me.1860, Fed.Cas.No. 8,596.

5. Vessels within section

This section does not apply to the shipping of seamen upon vessels engaged only for voyages coastwise between Atlantic ports of the United States. *U. S. v. Smith*, Mass.1877, 95 U.S. 536, 5 Otto 536, 24 L.Ed. 517.

This section expressly excepts vessels bound for a voyage to a port in the West India Islands and therefore such ship is not liable to the penalty. *U. S. v. The Grace Lothrop*, Mass.1877, 95 U.S. 527, 5 Otto 527, 24 L.Ed. 514.

This section does not apply to foreign ships and foreign seamen signing in an American port. *The Elswick Tower*, D. C.Ga.1917, 241 F. 706.

This section applies to contracts for shipping of crews for American vessels engaged in coastwise trade, and in trade between ports of the United States and the Dominion of Canada. *The Lillian*, D.C.Pa.1904, 131 F. 375.

This section is applicable to a vessel bound on a voyage from San Francisco to Clipperton Island, off the coast of Mexico, and thence to San Diego, Cal.,

and on two other voyages between San Diego, and Clipperton Island, and upon their completion return to the port of San Francisco. The *Alice Blanchard*, D. C. Cal. 1899, 92 F. 519.

By section 563 of this title, the provisions of this section were made applicable to contracts for shipping crews for American vessels in the coastwise trade and between the United States and Canada. The *Occidental*, D. C. Wash. 1898, 87 F. 485.

This section does not apply to a British vessel. The *Montapedia*, D. C. La. 1882, 14 F. 427.

This section does not apply to vessels bound for the West Indies, Mexico, or British North America. *Smith v. Chase*, D. C. Me. 1876, Fed. Cas. No. 13,023.

An agreement with a seaman on a voyage from New York to a port in Mexico is required under section 574 of this title in the form prescribed and under the penalty provided by this section. *U. S. v. The City of Mexico*, C. C. N. Y. 1874, Fed. Cas. No. 14,797.

This rule applies to a contract to ship as seamen on a trading voyage on the coast. *Waling v. The Christina*, D. C. Or. 1862, Fed. Cas. No. 17,059.

6. Construction of shipping articles—Generally

"Shipping articles are mercantile documents, and are entitled to a liberal construction in order to accomplish the purpose the parties had in mind. They are not to be scrutinized as if they were legal pleadings." *U. S. v. Westwood*, C. C. A. Va. 1920, 266 F. 696.

Where seamen, signing in Italy, accepted services of man who could speak some Italian in making known to them the terms of the articles, they cannot disavow terms of the articles. *The Han-nington Court*, D. C. N. Y. 1918, 252 F. 211.

Shipping articles, being prepared by a master, should be construed liberally in favor of seamen. *The Catalonia*, D. C. Va. 1916, 236 F. 554. See, also, *Mason v. Texas Co.*, D. C. Mass. 1948, 76 F. Supp. 318, affirmed 171 F. 2d 559, certiorari denied 69 S. Ct. 1156, 337 U. S. 915, 93 L. Ed. 1725.

A seaman's articles are construed with respect to the term of service. *The City of Montgomery*, D. C. N. Y. 1913, 210 F. 673.

While the courts regard seamen as wards of the admiralty and protect them from unfair treatment, notwithstanding their own improvidence in signing away their rights, still seamen are recognized as men, and agreements which they

make deliberately, intelligently, and voluntarily are to be enforced in their favor, and they are to be bound thereby the same as other competent parties to lawful contracts. *The Charles D. Lane*, D. C. Wash. 1901, 106 F. 748.

Shipping articles, specifying no time when service shall begin are valid, and the service is to commence in a reasonable time, which may be shown by parol. *Smith v. Chase*, D. C. Me. 1876, Fed. Cas. No. 13,023.

The construction most favorable to the seamen will be adopted in the case of ambiguity, uncertainty, or obscurity in the shipping articles. *Jansen v. The Theodor Heinrich*, D. C. Pa. 1838, Fed. Cas. No. 7,215. See, also, *Wope v. Hemenway*, D. C. Mass. 1855, Fed. Cas. No. 18,042, affirmed Fed. Cas. No. 13,149; *The Disco*, D. C. Or. 1873, Fed. Cas. No. 3,922.

Stipulations in derogation of general rights are void unless fully explained and additional compensation allowed adequate to the restrictions and risks imposed thereby. *Brown v. Lull*, C. C. Mass. 1836, Fed. Cas. No. 2,018. See, also, *The Sarah Jane*, D. C. N. Y. 1833, Fed. Cas. No. 12,348; *The Quintero*, D. C. Mass. 1866, Fed. Cas. No. 11,517; *Mayshew v. Terry*, D. C. Mass. 1861, Fed. Cas. No. 9,361; *Matern v. Gibbs*, D. C. Mass. 1847, Fed. Cas. No. 9,273; *Dooley v. The Neptune's Car*, D. C. Cal. 1860, Fed. Cas. No. 3,997; *The Australia*, D. C. Me. 1859, Fed. Cas. No. 687; *The Almatia*, D. C. Or. 1868, Fed. Cas. No. 254.

If a vessel be intended to cruise as well as trade, the seamen's articles must be construed with reference to this double object. *Ellison v. The Bellona*, D. C. S. C. 1798, Fed. Cas. No. 4,406.

Courts of admiralty cannot properly apply to maritime contracts the same strictness that prevails at common law. *Id.*

Though the law is liberal in construing contracts in favor of seamen, still it holds them capable of contracting, and bound like other persons by their contracts when no fraud is practiced upon them. 1872, 13 Op. Atty. Gen. 557.

7. Vagueness

Extrinsic evidence is admissible and may be considered for purpose of clarifying ambiguous terminology in shipping articles. *Medina v. Erickson*, C. A. Cal. 1955, 226 F. 2d 475, certiorari denied 76 S. Ct. 702, 351 U. S. 912, 100 L. Ed. 1446.

Shipping articles which are so vague that they are not informative are void. *Newton v. Gulf Oil Corp.*, C. A. Pa. 1950,

Note 7

180 F.2d 491, certiorari denied 71 S.Ct. 42, 340 U.S. 814, 95 L.Ed. 598.

Where only reference in shipping articles to payment of war bonus to officers and crew was clause providing "a war bonus payable on this voyage in accordance with U. S. Maritime Commission decisions", but the Commission had not issued any decisions relating to war bonuses, the clause was ambiguous and the working arrangement between parties, and the collective bargaining agreement on which shipping articles were predicated could be considered for purpose of construing the ambiguous clause. *Mason v. Texas Co.*, D.C.Mass.1948, 76 F. Supp. 318, affirmed 171 F.2d 559, certiorari denied 69 S.Ct. 1156, 337 U.S. 915, 93 L.Ed. 1725.

Shipping articles to a certain port and a market are sufficiently definite. *U. S. v. Staly*, C.C.R.I.1846, Fed.Cas.No.16,374.

A description of the voyage as "from Boston to one or more ports south, thence to one or more ports in Europe, and back to a port of discharge in the United States," was sufficiently certain. *Thompson v. The Oakland*, D.C.Mass. 1841, Fed.Cas.No.13,971.

The words "or elsewhere" in shipping articles are either void for uncertainty, under this section, or are to be construed as subordinate to the principal voyage stated in the articles. *Brown v. Jones*, C.C.Mass.1815, Fed.Cas.No.2,017.

8. Blank spaces in articles

Under this section, as affected by section 563 of this title, and under sections 565, 576, and 591 of this title, it is not competent for the master to fill up blank spaces left in the shipping articles, so as to bind the seaman as to the time for being on board to begin work, as such articles constitute a contract for wages. *The Shetland v. Johnson*, 1903, 21 App. D.C. 416.

In an admiralty proceeding by seamen against a vessel for wages claimed to be due them, the failure to have inserted in the shipping articles, before they were executed before a United States shipping commissioner, the time each seaman was to be on board to begin work, will justify a decision in favor of libellants, where the testimony is evenly balanced as to the time the men were required to be on board. *Id.*

9. Parole agreements

Where no articles were signed by persons hired by person purporting to be captain of vessel as members of crew thereof, any contract of hire between

them and vessel was merely verbal and without definite term and hence terminable at will by either party, even if such person had authority to hire crew. *Findley v. Red Top Super Markets, C.A.Fla.* 1951, 188 F.2d 834, certiorari denied 72 S.Ct. 112, 342 U.S. 870, 96 L.Ed. 654.

Oral representations are merged in subsequently signed articles for voyage, and afford seamen no ground for recovery. *Foreman v. J. M. Benas & Co.*, D.C.N.Y.1917, 247 F. 183.

The contract of service of a seaman as evidenced by the shipping articles cannot be changed by parole evidence unless fraud is clearly established. *The Ucayali*, D.C.N.Y.1908, 164 F. 897.

There is no custom exempting the crew from the duty of handling cargo when it consists of ice, in the absence of an express stipulation in the shipping articles. *O'Brien v. The Cramp*, D.C.Pa. 1898, 84 F. 696.

There is nothing in sections 541 et seq. of this title which requires a contract to be made in writing or in print, between the master of a vessel and the seamen, before the latter are received on board. *U. S. v. The Thomas W. Haven*, C.C.Mass. 1880, 3 F. 347.

The maritime law requires that contracts touching the service of seamen shall be in writing. *Smith v. Chase*, D.C.Me.1876, Fed.Cas.No.13,023.

Parol evidence is admissible to show that illiterate seamen signed a contract not read to them, which differed from their oral agreement. *The Tarquin*, D.C.Mass.1874, Fed.Cas.No.13,755.

An agreement made by the shipping agent at the time the articles were signed, and understood by the seaman to form a part of his contract, though not embraced therein, will be given effect. *The Lola*, D.C.N.Y.1872, Fed.Cas.No.8,468.

Where the contract was fully explained to the seamen before they signed it, they cannot vary the voyage by parole evidence. *The Quintero*, D.C.Mass.1866, Fed.Cas.No.11,517.

Where two distinct contracts, for service on two distinct voyages, are made at the same time, and one only is reduced to writing, the other may be proved by parole. *Page v. Sheffield*, C.C.Mass.1855, Fed.Cas.No.10,667.

A stipulation in writing for a series of voyages may be terminated or varied by mutual consent of the master and crew, and a new voyage substituted by parole

agreement. *Pichl v. Balchen*, D.C.N.Y. 1844, Fed.Cas.No.11,137.

A parol understanding that the vessel was not to complete the voyage described in the shipping articles is not admissible. *Thompson v. The Oakland*, D.C.Mass.1841, Fed.Cas.No.13,971.

Accidental omission from shipping articles may be supplied by parol. *Wickham v. Blight*, D.C.Pa.1834, Fed.Cas.No. 17,611. See, also, *The Antelope*, D.C. Mass.1867, Fed.Cas.No.484.

The well-established rule of common law, viz., that a written instrument cannot be varied by parol, has been abrogated with regard to seamen, though remaining in full force as against the shipowner. *The Triton*, D.C.N.Y.1832, 1 Blatchf. & H.Adm. 282, Fed.Cas.No.14,181. See, also, *The Exchange*, D.C.N.Y. 1833, 1 Blatchf. & H.Adm. 366, Fed.Cas. No.4,594.

Parol evidence on the part of a seaman is admissible to vary or contradict the shipping articles. *The Cypress*, D. C.N.Y.1829, Fed.Cas.No.3,530.

10. Signing of articles

Under section 713 of this title person employed or engaged to serve in some capacity on board ship constituted a member of the crew, notwithstanding that he had not signed articles, which was necessary under this section only when vessel is on voyage. *The Falco*, C. C.A.N.Y.1927, 20 F.2d 362.

Where libellant was injured after being member of vessel's crew for several days but before articles had been signed and ship had left port, he was entitled to recover what he had spent for maintenance and cure and wages for two weeks, such period being sufficient to enable him to seek new place, but not to wages for the voyage, nor for loss of time in getting back to his home port. *The Vestris*, D. C.N.Y.1918, 252 F. 201.

Where libellant signed shipping articles he became a member of the vessel's crew from that time, subject to all penalties imposed on seamen by the maritime law of the United States. *The Ida G. Farren*, D.C.N.C.1904, 127 F. 766.

Where a sailor whose name does not appear on the shipping articles, and who says that he shipped without signing them, performs his duty properly until the vessel reaches a port, when he leaves her, he is entitled to recover on a quantum meruit for the time he served. *Kelley v. The Topsy*, D.C.S.C.1890, 44 F. 631.

A person who enters upon the performance of duties as a seaman, and who through no fault of his own, has not as yet signed articles, would not be thereby deprived of the benefits accruing to him as seaman. Id.

If the master of a vessel dispenses with shipping articles, and disputes arise as to the rate of wages to be paid the mariners, the court will incline to allow their claim to the rate paid by other like vessels leaving the same port at the same time on the like voyage, if the seamen can be held to a less rate by reason of a verbal contract, such contract must be clearly established. *The Acorn*, D.C.Pa. 1883, 15 F. 751.

For a seaman to be entitled to increased pay for doing of work, in compliance with master's orders, requiring a higher rate of pay than that for which the seaman contracted to perform, seaman need not sign the articles again. *Bender v. Waterman S. S. Corp.*, D.C.Pa. 1946, 69 F.Supp. 15, affirmed 166 F.2d 428.

Shipping articles signed by the seamen after they leave port are not binding upon them. *The Theodore Perry*, D. C.Mich.1878, Fed.Cas.No.13,880.

The agent of the master in shipping a crew cannot also act as the agent of a seaman, and sign his name to the shipping articles. In re *Bryant*, D.C. Or.1865, Fed.Cas.No.2,067.

A contract entered into at sea, changing the terms or duration of the original contract, will be disregarded if prejudicial to the seamen's interest. *Walling v. The Christina*, D.C.Or.1862, Fed.Cas.No. 17,059.

Though no shipping articles are signed, seamen are bound to remain with the ship until the voyage is terminated. *Jansen v. The Theodor Heinrich*, D.C. Pa.1838, Fed.Cas.No.7,215. See, also, *The Australia*, D.C.Me.1859, Fed.Cas.No.867.

A seaman shipped without signing articles is entitled to all benefits and subject to all forfeitures prescribed by the maritime law. *Jameson v. The Regulus*, D.C.Pa.1800, Fed.Cas.No.7,193.

A Chinese crew that shipped at Hong Kong on a vessel belonging to a company chartered under the laws of the United States for a trip to San Francisco and return by the same vessel, or any other vessel belonging to that company, which crew, owing to an accident to the ship, was brought to San Francisco on a vessel belonging to a different company, may be transferred to another vessel, substituted for the one injured, but

Note 10

should duly sign for that service before a United States shipping commissioner in compliance with this section. 1902, 24 Op.Atty.Gen. 111.

Former Act of Congress requiring shipping articles to be in writing or in print did not require a formal signing thereof by the master and it was sufficient in this respect if they were signed by the seamen and mariners. *Botker v. Towner*, N.Y.1854, 3 E.D.Smith 132.

A seaman who signs a contract to perform a voyage is bound to a specific performance, and may not elect to pay damages for nonperformance of it. *Ex parte Pool*, 1821, 2 Va.Cas. 276.

11. Nature of voyage—Generally

Shipping articles are mercantile documents, and entitled to a liberal construction to accomplish the purpose the parties had in mind; but under this section they must, to be valid, inform the seaman, in general terms at least, what kind of voyage is then planned, reserving on their face, if need be, sufficient latitude for changes to meet subsequent exigencies. *U. S. v. Westwood*, C.C.A. Va.1920, 266 F. 696.

Under this section, which provides that the shipping articles signed by a crew shall indicate the nature of the intended voyage, the shipowner cannot vary such articles by evidence of a verbal agreement, made at the time they were signed, that the voyage should be other than that described therein. *Northwestern S. S. Co. v. Turtle*, Wash.1908, 162 F. 256, 89 C.C.A. 236.

It was not the intention of Congress in enacting this section to require owners of sailing vessels engaged in the coastwise trade to specify at the inception of each voyage all the ports at which the vessel might touch or to deprive the master of the power to exercise a reasonable discretion in touching at other convenient ports and availing himself of the opportunities afforded by the exigencies of trade; if such had been the intention of this section it would undoubtedly have been expressed in terms, and 1 that is exacted is that the nature of the intended voyage be described. *The Mermaid*, Wash.1902, 115 F. 13, 52 C.C.A. 607.

It is the intention of law to prohibit the shipment of seamen without their consent; and to make it appear that the seamen have consented to enter the service of the vessel for a voyage or for a specified term, it is essential, and the law requires, that the shipping articles

specify clearly the nature of the intended voyage. *The Occidental*, D.C.Wash. 1900, 101 F. 937.

Shipping articles which provide for a voyage to one or more foreign ports, or for a coasting voyage, at the option of the master, do not sufficiently state the nature of the voyage as required by this section, and are void. *Id.*

A mariner may show that the shipping articles do not truly describe the voyage for which he contracted, and may recover accordingly. *Page v. Sheffield*, C.C. Mass.1855, Fed.Cas.No.10,667.

12. Particular cases

Under this section articles for service on a brig from a port in the state of Washington "to ports in the district of Alaska, within the Behring Sea and Arctic Ocean, and also other ports and places in any part of the world, as the master may direct, and back to a final port of discharge in the United States, for a term of time not exceeding six calendar months," are not so indefinite in describing the nature of the voyage as to render them void, in view of the character of the vessel, the length of time required to make the voyage to an Alaskan port and return, and the limit on the term of service. *The Mermaid*, Wash.1902, 115 F. 13, 52 C.C.A. 607.

Shipping articles are sufficiently definite as to the nature, duration, and termination of the voyage, under the requirements of this section, where it is described as "from the port of San Francisco to San Francisco, to Puget Sound; thence to San Diego, or any other port on the Pacific coast of the United States; thence to Puget Sound or Shoalwater Bay again, or to any other port or ports on the Pacific coast of the United States; thence to San Francisco for final discharge"; and seamen signing the same, who leave the ship before the termination of the voyage stated, forfeit their wages. *The Roy Somers*, D.C. Cal.1900, 107 F. 750.

Where shipping articles described the voyage as follows: "From the port of San Francisco, Cal., to any port or ports on Puget Sound or British Columbia for orders. At Puget Sound or British Columbia, vessel may be ordered to load cargo for any port or ports in Alaska, as the master may direct. If the vessel is ordered to Alaska, the trips between Puget Sound or British Columbia and Alaska to be repeated one or more times; thence to San Francisco for final discharge, either direct, or via one or more ports on the Pacific coast,—for a term

of time not exceeding six months," such articles set forth the nature, duration, and termination of the voyage with sufficient certainty to satisfy this section. *Diochet v. The Occidental*, D.C.Wash. 1898, 87 F. 485.

Though shipping articles describing the voyage to be from "Boston to Goree, Africa, at and from thence to such port or ports as the master might direct" be void, the master is not justified in discharging the seamen in Africa. *Burke v. Buttman*, D.C.Mass.1867, Fed.Cas.No. 2,160.

A whaling voyage is properly a cruise for taking whales, and does not include a trading voyage to dispose of the cargo after it is obtained. *Gifford v. Kollock*, D.C.Mass.1856, Fed.Cas.No.5,409.

It seems that a "trading voyage" does not include a "freighting voyage." *Brown v. Jones*, C.C.Mass.1815, Fed.Cas. No.2,017.

13. Duration of voyage—Generally

Where delay which extends the period mentioned in the shipping articles is not due to any fault of the vessel, master, or owner, it is the duty of the seaman to continue his service until completion of the voyage to the port of destination. *Shanley v. U. S.*, C.C.A.N.Y.1923, 294 F. 502.

Under the amendment of 1873 to the merchant shipping act of Great Britain, the shipping agreement need contain no further description of the voyage than its maximum period, and the places or parts of the world to which it is not to extend. *Riley v. Henderson*, 1883, 134 s. 171.

14. — Particular cases

Where seamen signed for a voyage, not exceeding six calendar months, and the time expired before completion of the voyage, and when the vessel was in a foreign port, where there was no American consul, and on refusal of the crew to serve longer, except for double pay, the master signed an agreement for double wages for the remainder of the voyage under protest, such agreement was ineffective, and the rights of the parties are determined under the original contract. *Shanley v. U. S.*, C.C.A.N.Y.1923, 294 F. 502.

Where shipping articles between the master of a vessel and the libelants at Baltimore prescribed the voyage and duration thereof as follows: "From the port of Baltimore, Md., to such ports and places in any part of the world, via an American port, as the master may di-

rect, and back to a final port of discharge in the United States, for a term of time not to exceed six calendar months," provision was too indefinite and uncertain as to the voyage and services contracted for to bind the libelants, and they were entitled to be paid the wages due them up to the date of their refusal to continue the voyage. *The Quogue*, D.C.Va.1919, 261 F. 414, affirmed 266 F. 696.

A contract contained in the shipping articles, providing for a term of service and not merely for service upon a specified voyage, describing the terms as "from the port of Tacoma to Honolulu, H. I., and back to San Francisco, Cal., as a final port of discharge, either direct or via one or more ports on the Pacific coast, for a term of time not exceeding nine calendar months," fairly and fully meets the requirements of this section. *The C. F. Sargent*, D.C.Wash.1899, 95 F. 179.

Where the duration of the voyage is described as probably 12 months, the seaman, under the British merchants' shipping act, is absolutely bound to make the voyage, if the master endeavors, in good faith, to accomplish it within the time mentioned. *The Hotspur*, D. C.Or.1874, Fed.Cas.No.8,720.

Under shipping articles describing the voyage as "from," "to," "thence," and "finally" certain ports named, for a period not exceeding 12 months, the seamen are not bound for 12 months unless the vessel went to the ports in the order named. *The William Jarvis*, D.C.Mass. 1859, Fed.Cas.No.17,697.

15. Termination of voyage—Generally

Under this section and section 597 of this title, neither master nor crew can renounce their duties under the contract until the end of the voyage, which means the port of destination, not a port of distress; so that the seamen are bound to serve until the voyage ends in the port of destination, if it is extended beyond the time mentioned in the contract, not by the intention or negligence of the master, which would be a breach of the contract releasing the seamen, but by perils of the sea. *Hamilton v. U. S.*, C.C.A.Va.1920, 268 F. 15, certiorari denied 41 S.Ct. 15, 254 U.S. 645, 65 L.Ed. 454.

A contract for a voyage, which has not a definite time and place of termination, is void. *The Horace E. Bell*, D.C.Ma. 1859, Fed.Cas.No.6,702. See, also, *Magee v. The Moss*, D.C.Pa.1831, Fed.Cas.No.8-944.

Note 15

Where the shipping articles are to the final port of discharge, the owner may order the vessel from port to port until the whole is discharged. *U. S. v. Barker*, C.C.Mass.1829, Fed.Cas.No.14,516.

Term "voyage" imports a definite commencement and end, and not controlled by term "elsewhere." *Anonymous*, D.C. Md.1808, Fed.Cas.No.440.

Shipping articles providing for a final port of discharge in the United States comply with this section requiring that the articles state the nature and, so far as practicable, the duration of the intended voyage and the port or country in which the voyage is to terminate. *Hellevik v. American Sugar Transit Corporation*, 1941, 26 N.Y.S.2d 724, 261 App. Div. 591.

16. — Particular cases

As respects Labor Relations Board's order requiring steamship company to offer reinstatement to discharged seamen and to seamen who went out on strike following such discharge, evidence that new articles are ordinarily signed as old articles are signed off, and that seamen considered themselves engaged for new voyage unless notified to contrary, warranted Board's finding that tenure of employment of seamen was not terminated by mere expiration of shipping articles. *Southern S. S. Co. v. National Labor Relations Board*, C.C.A. 1941, 120 F.2d 505, reversed on other grounds 62 S.Ct. 886, 316 U.S. 31, 86 L. Ed. 1246.

Under shipping articles for a voyage from New York "to a final port of discharge in the United States north of Cape Hatteras," such port was one on the Atlantic coast. *Jenkins v. U. S. Emergency Fleet Corporation*, D.C.Wash. 1920, 268 F. 870.

Under shipping articles for a voyage from Boston to a Cuban port, and such other West Indian or Gulf of Mexico ports as the master might direct, and back to a final port of discharge, north of Hatteras, for a term not exceeding six calendar months, the voyage includes such trips, within the articles, as may be made within the six months, and the seamen are not entitled to payment of full wages within that time, unless the vessel makes a United States port north of Hatteras. *The Cubadist*, C.C.A.Ala. 1919, 256 F. 203, certiorari denied 39 S.Ct. 392, 249 U.S. 618, 63 L.Ed. 804.

Where shipping articles described the voyage for which the seamen became bound as from New York to Shanghai; "thence, if required, to any ports and

places within the limits of seventy-five degrees north and sixty-five degrees south latitude, trading to and fro for a period not to exceed three years; voyage to end at a port in the United States, the United Kingdom, or the continent of Europe," the contract was for a voyage, and not for a term of three years, and that such voyage terminated, and the seamen were entitled to discharge, on the return of the ship to a port of the United States. *The Falls of Keltie*, D.C. Wash.1902, 114 F. 357.

Where San Francisco, by the terms of the contract, was the port of final discharge, and the vessel was to go there from Port Hadlock either directly or by one or more ports to the Pacific coast, the words "via one or more ports of the Pacific coast" did not authorize the vessel to sail by San Francisco to a port not intermediate between Port Hadlock and San Francisco but several hundred miles to the south of the latter port and then return or make a second voyage to Port Hadlock. *The J. M. Griffith*, D.C. Cal.1895, 71 F. 317.

Final port of discharge, as used in shipping articles, defined. *Schermacher v. Yates*, D.C.N.Y.1893, 57 F. 668.

Specifying the places to which the voyage might extend, was an implied agreement that it was not to extend to any other, and a sufficient compliance with the English merchant shipping act of 1873. *The Hermine*, D.C.Or.1874, Fed. Cas.No.6,409.

Under articles for a voyage from New Orleans to Havre, and thence to one or more ports in Europe, and thence back to a port of discharge in the United States, the seamen cannot be required to proceed to Charleston as a final port of discharge after the vessel has stopped at New York, and landed passengers and freight. *U. S. v. White*, D.C.N.Y.1848, Fed.Cas.No.16,683.

Shipping articles for a voyage "from P. to G., other ports in Europe, or South America, and back to P.," do not authorize a return to a European port after proceeding to South America. *Douglass v. Myre*, D.C.Pa.1830, Fed.Cas.No.4,032.

A voyage from A. to B., or some other port, and return to the United States, is not ended on arrival at the first port of the United States, unless it be the port of discharge. *U. S. v. Smith*, C.C.Mass. 1816, Fed.Cas.No.16,337.

A description of a whaling voyage "to the Northern Pacific Ocean and elsewhere" is defective, having no termination of time and place, and the contract

is void. *Brown v. Jones*, C.C.Mass.1815, Fed.Cas.No.2,017. See, also, *Gifford v. Kollock*, D.C.Mass.1856, Fed.Cas.No.5,409.

Under articles for a voyage to Batavia, and thence, if required, to ports beyond the Cape of Good Hope, the voyage may be extended to Japan. *Jones v. Smith*, C.C.Md.1812, Fed.Cas.No.7,497.

Where seamen at New York signed shipping articles for voyage on a coastwise cargo steamer under a voyage charter and the shipping articles provided that the termination of the voyage was to be a final port of discharge in the United States, the seamen who signed articles of discharge and release at termination of voyage at port of New Orleans, La., could not establish a variation of the terms of the shipping articles by evidence of an oral agreement that seamen would be returned to port of Philadelphia. *Hellevik v. American Sugar Transit Corporation*, 1941, 26 N.Y.S.2d 724, 261 App.Div. 591.

Where shipping articles, signed at New York, provided that termination of voyage was to be a final port of discharge in the United States and at termination of voyage at New Orleans, La., seamen signed articles of discharge and release, there was no wrongful or improper discharge of seamen and the nature of the voyage and provisions of the shipping articles negated seamen's contention that contract was that they would be returned to New York, where the voyage began or port of Philadelphia. *Id.*

17. Deviation from route

Where it appeared as a matter of law on appeal from judgment dismissing action for injuries sustained by plaintiff while employed as fireman and water tender aboard defendant's vessel that there had been no deviation from the voyage described in ship's articles, error in submitting to jury question of whether there had been such deviation was favorable and not prejudicial to plaintiff. *Kane v. American Tankers Corp.* of Del., C.A.N.Y.1955, 219 F.2d 637.

Description of voyage in ship's articles as voyage to one or more ports in the Caribbean and such other ports in any part of the world as master might direct, and back to final port of discharge in the United States within 12 months could be so narrowed as to bring it within limits of permissible generality by permitting the general words to be cut down by specific words and the circumstances. *Id.*

In view of this section, which provides that the shipping articles signed by a

crew shall indicate the nature of the intended voyage, a shipowner, when sued by members of the crew for damages resulting from a deviation from the voyage specified in the articles, cannot be permitted to show by parol evidence that the members of the crew were informed that the nature of the intended voyage was materially different from that stated, and that they assented to the deviation at the time of their engagement. *Turtle v. Northwestern Steamship Co.*, D.C.Wash.1907, 154 F. 146, affirmed 162 F. 256, 89 C.C.A. 236.

Where an American registered vessel had been engaged for a number of years in the carrying of passengers and freight between the ports of Hong Kong, China, and Tacoma, in the United States, touching at other ports in China, Japan, and British Columbia and for such voyages it employed Chinese seamen in Hong Kong, the custom being to consider their term of service as ended on the completion of the round trip and return of the vessel to Hong Kong, which was the port of discharge, although the shipping articles fixed the term of service at six months, and authorized the vessel to go "to any other ports or places in any part of the world, as the master may direct," on the arrival of the vessel at Tacoma on one of its usual voyages, it was chartered by the United States government as a transport to be used in conveying troops and supplies to Manila, such service on the part of the seamen was within the terms of their shipping articles, and, as the voyage to Manila was in the direction of Hong Kong, and after its completion the master could either proceed to that port, or secure transportation there for the seamen within the term of six months, they were not entitled to be released from their contract by reason of the deviation of the ship from its usual business or route, but that the owners would be required to give bond for the release of the seamen, and their return to Hong Kong, in accordance with the contract, after completion of the voyage to Manila. *In re Chung Fat*, D.C.Wash.1899, 96 F. 262.

Articles describing a voyage from England to the United States and back did not include ports on the Pacific coast. *The Disco*, D.C.Or.1873, Fed.Cas.No.3,922.

Articles for a voyage from Salem, Mass., to Goree and a market, and back to a final port of discharge in the United States, do not authorize an intermediate trading voyage among the islands and on the coast of Africa. *The Gem*, D.C.Mass.1867, Fed.Cas.No.5,304.

Note 17

Shipping articles for a voyage from Liverpool to ports in the Indian, Pacific, and Atlantic Oceans and back to a final port of discharge in the United Kingdom, where the vessel has sailed from St. Helena to New York, do not authorize accepting a cargo there for Valparaiso. *Reynolds v. The Simoon*, D.C.N.Y. 1863, Fed.Cas.No.11,733.

Under articles describing a voyage to be from Liverpool to Savannah and any ports of the United States, of the West Indies and of British North America, a voyage to San Francisco is not authorized. *The Ada*, D.C.Me.1849, Fed.Cas.No. 38.

Under articles for a voyage to a South American port, thence to a port in Europe and back to the United States, the vessel is not authorized to proceed from Europe to South American ports. *Piehl v. Balchen*, D.C.N.Y.1844, Fed.Cas.No.11,137.

Where the voyage is "from Philadelphia to South America, or any other port or ports, backwards and forwards, when and where required, and back to Philadelphia," the master may proceed from South America to Europe. *Magee v. The Moss*, D.C.Pa.1831, Fed.Cas.No.8,944.

Under shipping articles authorizing the master to touch at certain intermediate ports, "or as he may direct," he may stop at places not named, without violating the contract with the seamen. *Wood v. Nimrod*, D.C.Pa.1829, Fed.Cas.No.17,959.

18. Rating of seamen

Seaman, who shipped as steward's helper at rate of 25 cents per month and signed shipping articles to that effect, was not shipped in violation of this section, and section 569 of this title, requiring master to make agreement in writing with every seaman whom he carries as one of crew, though he actually served as able seaman rather than as steward's helper. *Buckley v. Oceanic S. S. Co.*, C.C.A.Cal.1925, 5 F.2d 545.

The master of a vessel has authority to disrate a seaman for incompetency or other adequate cause, but while the disrating of a seaman is an abrogation of his contract and entitles him to his discharge forthwith, if it occurs in port, or to his discharge as soon as the vessel reaches a port, he has the option of accepting a position at a new rating, and when he has once exercised that option his election to serve in the new capacity is binding on him, and entitles him to compensation for services thereafter only at the rate paid for services in that ca-

capacity. *Butler v. Pacific Mail Steamship Co.*, C.C.A.Cal.1923, 290 F. 806.

A provision in shipping articles for a whaling voyage that, if any officer or seaman shall be judged by the master incompetent or indisposed to the proper discharge of the duties of his station, the master may "displace him and substitute another in his stead," and that a corresponding reduction of the lay of such officer or seaman, with reference to the duty which he may afterwards perform, shall thenceforth take effect, does not authorize the master to discharge from the vessel one who has shipped under these articles as second mate; and the effect of such a provision cannot be varied by evidence of a usage in the whaling trade never to disrate an officer to a seaman, but when the necessity for displacing him occurs to discharge him from the vessel. *Potter v. Smith*, 1869, 103 Mass. 68.

19. Wages—Generally

An agreement, after the signing of articles for a voyage, to pay seamen, in event of the happening of a contingency, a sum greater than they would be otherwise entitled to, is unenforceable, because without consideration. *Foreman v. J. M. Benas & Co.*, D.C.N.Y.1917, 247 F. 133.

The rights of a seaman against the vessel for wages and care are not affected by the fact that the shipping articles signed by him did not conform to the requirement of the laws of the United States and the master cannot be permitted to take advantage of his own neglect in that regard. *Paulson v. The Governor Ames*, D.C.Wash.1891, 55 F. 327.

In so far as the articles provide for a forfeiture of wages in excess of that provided by this section, they are contrary to law. *The San Marcos*, D.C.N.Y. 1886, 27 F. 567.

Though shipping articles may be attacked by seamen, and shown by parol to be incorrect, fraudulent, or void, yet, in case of dispute as to the amount of wages agreed on, the shipping articles will control, the seaman being competent to bind himself thereby, unless the articles are shown to be invalid by a reasonable and satisfactory preponderance of evidence. *The Elvine*, D.C.N.Y.1884, 19 F. 528.

The rate of wages for previous service will be taken to be the measure of wages, where the seaman shipped without an agreed rate. *Milligan v. The B. F. Bruce*, D.C.Mich.1857, Fed.Cas.No.9,662

See, also, *Thompson v. Faussat*, C.C.Pa. 1815, Fed.Cas.No.13,954; *The Magna Charta*, D.C.Mass.1872, Fed.Cas.No.8,953.

Seamen are competent to bind themselves by contract as to rate of wages. *The Atlantic*, D.C.N.Y.1849, Fed.Cas.No. 620.

Where the shipping articles specify the wages, the mate cannot give parol evidence of an agreement to allow him other compensation. *Veacock v. McCall*, D.C.Pa.1832, Fed.Cas.No.16,904.

A stipulation not to demand wages before a certain time is void where the service is completed, or the seaman discharged before the expiration of that time. *The Cypress*, D.C.N.Y.1829, Fed.Cas.No.3,530.

A stipulation not to demand wages until arrival of vessel at final destination will not bar wages. *Relf v. The Maria*, D.C.Pa.1805, Fed.Cas.No.11,692. See, also, *The General Chamberlain*, D.C.Me.1872, Fed.Cas.No.5,310.

The right of a seaman to wages is not founded in the articles, but in the service. *Mahoon v. The Gloucester*, Adm.Ct. Pa.1780, Fed.Cas.No.8,970, affirmed Fed.Cas.No.7,632.

20. — Bonus

Where shipping articles provided for "a war bonus payable on this voyage in accordance with U. S. Maritime Commission decisions" but such Commission had not issued any decisions relating to war bonuses and Maritime War Emergency Board had issued decisions, the reference was meant to be to Maritime War Emergency Board decisions and decisions of such Board issued up to date of the signing of articles governed licensed officers' rights to war bonus during internment by an enemy. *Mason v. Texas Co.*, C.A.Mass.1949, 171 F.2d 559, certiorari denied 69 S.Ct. 1156, 337 U.S. 915, 93 L.Ed. 1725.

Where parties to shipping articles intended that war bonuses on voyage were to be payable in accordance with Maritime War Emergency Board decisions, but decisions of such Board up to date of signing of shipping articles indicated that a bonus was payable only for time of actual voyage in certain specified waters, officers were not entitled to war bonus for period of their internment on land by enemy. *Id.*

Where shipping articles provided that decisions of Maritime War Emergency Board should be applicable and decision of Board provided that no bonus should be paid to a seaman while on land, in-

jured seaman was properly denied any bonus for period while he was ashore. *Farrell v. U. S.*, C.C.A.N.Y.1948, 167 F.2d 781, affirmed 69 S.Ct. 707, 336 U.S. 511, 93 L.Ed. 413.

If the vessel becomes unseaworthy during the voyage, a contract for a bonus to induce the seamen to assume the added risk, instead of taking their discharge under section 658 of this title rests on a good consideration. *The Jacob Luckenbach*, D.C.La.1929, 36 F.2d 381.

A messman was bound by the Maritime War Emergency Board decisions incorporated in shipping articles respecting payment of wages and bonuses during war time where there was nothing raising an inference of fraud or imposition upon the messman in signing the articles and he accepted payments thereunder. *Montoya v. Tide Water Associated Oil Co.*, D.C.N.Y.1948, 79 F.Supp. 677, affirmed 174 F.2d 607, certiorari denied 70 S.Ct. 89, 338 U.S. 847, 94 L.Ed. 518.

Decision of the Maritime War Emergency Board incorporated in shipping articles signed by messman stating that war bonuses were payable only while vessels were within limits defined in their respective classes applied only to the voyage of a vessel and did not authorize messman to claim a war bonus for the period of his internment, as a Japanese prisoner on land. *Id.*

21. — Illness or injury

Under proper construction in light of parol evidence including custom, shipping articles providing for one or more trips to certain ports for term of time not exceeding 12 calendar months provided for 12 months' limitation upon duration of the voyage and did not state 12 months as period of employment and seaman's employment ended on completion of first voyage, so he had no right to compensation for subsequent voyages which he did not make because of illness. *Medina v. Erickson*, C.A.Cal.1955, 226 F.2d 475, certiorari denied 76 S.Ct. 702, 351 U.S. 912, 100 L.Ed. 1446.

Where a seaman has been injured, so as to prevent his working on a voyage, his wages cannot be allowed for a longer term than the voyage agreed on, nor at a rate different from that agreed on. *The Cliftwood*, D.C.Ala.1922, 280 F. 726.

Where libellant was told by port steward to report for duty as chief steward aboard ship, and he reported on November 19, but never signed articles and on November 24 he was allegedly injured on the ship through his own negligence while moving stores, and on November 26 he left the ship and never

Note 21

returned, he was not entitled to wages for the voyage which he intended to make. *Witt v. U. S.*, D.C.N.Y.1949, 82 F.Supp. 696.

A stipulation that the seamen shall pay for medical advice and medicines, without any condition that there shall be a suitable medicine chest, etc., is void, as contrary to the policy of this section. *Harden v. Gordon*, C.C.Me.1823, Fed.Cas.No.6,047.

22. — Overtime

Where indorsement of board of local inspectors upon certificate of inspection of vessel set out the crew required when in commission not more than 13 hours out of every 24, even if owner of vessel and extra deck hand combined to violate the regulations, the extra deck hand was not entitled to additional pay for the overtime where he had no contract for additional pay for overtime and signed a receipt for services rendered every two weeks. *Jordan v. Texas Co.*, C.C.A.N.C. 1941, 123 F.2d 614.

If doing of work by seaman in compliance with master's orders, involving work which requires a higher rate of pay than that for which the seaman contracted to perform, is in excess of or beyond regular hours for which the seaman contracted to perform, he is entitled to wages at prevailing or agreed rate for those extra hours. *Bender v. Waterman S. S. Corp.*, D.C.Pa.1946, 69 F.Supp. 15, affirmed 166 F.2d 428.

Wiper who was "promoted" to fireman at lesser rate of wages when regular fireman became sick, without any change in written shipping articles as required by this section, was entitled to recover overtime compensation. *Id.*

Provision of shipping articles, providing that a "general change in wages" while vessel is away is to take effect from date of change, was applicable to the shortening of working hours with provision for overtime payment beyond the regular hours of work; such change being in effect a "general change in wages." *Jensen v. Barber S. S. Lines*, 1920, 130 N.Y.S. 754, 110 Misc. 632.

Where an eight-hour day at sea is provided for, a seaman working beyond the eight-hour period at sea would be entitled to extra compensation, unless the work was done for the safety of the vessel, cargo, passengers, and crew within working rule 1. *Id.*

23. — Profits or earnings, share in

Where applicable shipping articles provided that if crew member became ill or

injured on boat in line of duty, master might require doctor's certificate before permitting member to return home, and that any member returning home with captain's approval would receive share of catch for that particular trip only, and where it was agreed that share of catch is equivalent to wages, general rule that payment of wages to a seaman who becomes ill while working continues throughout his term of employment was applicable. *Medina v. Erickson*, C.A.Cal. 1955, 226 F.2d 475, certiorari denied 76 S.Ct. 702, 351 U.S. 912, 100 L.Ed. 1446.

Where shipwrecked seaman was taken on board a whaler in the Arctic ocean, master did not put the seaman's name on the shipping articles, as he was requested to do, and he testifies, without corroboration, that the lay allowed the seaman was 1-170 and the latter told the master that his lay on the wrecked vessel was 1-100, when it was in fact 1-125; but he testifies that the master believed him, and allowed him 1-100, which is corroborated by the engineer of the wrecked vessel, it was admitted that shipwrecked seamen taken on board in the Arctic ocean usually receive a higher lay than those shipped at the commencement of the voyage; seaman was entitled to a lay of 1-100. *The Hunter*, D.C.Cal.1836, 47 F. 744.

A stipulation, in shipping articles for whaling voyages, that the owners may ship catchings home on freight, is valid. *Frates v. Howland*, D.C.Mass.1871, Fed. Cas.No.5,066.

Seamen on a whale fishing voyage, who were discharged on an island in the Pacific, and then entered for a new voyage, were not bound by the shipping articles, but entitled to a quantum meruit. *Mayshew v. Terry*, D.C.Mass. 1861, Fed.Cas.No.9,361.

Shipping articles entered into for a whaling voyage, and contemplating the payment of the officers and crew by "lays," or shares in the vessel's earnings, contained a stipulation that either of the officers or crew who might be prevented by any cause from performing their duty during the whole of the voyage should receive of his lay only in proportion that the time served by him should be to the whole time of the voyage and such stipulation would be sustained, even without evidence that special explanation of it was made to the seaman. *The Atlantic*, D.C.N.Y.1849, Abb.Adm. 451, Fed.Cas.No.620.

24. — Particular cases

Where ship's articles, for war security reasons, described voyage only as to

such places as might be ordered and back, for a term not exceeding 12 months, the 12-month period was merely a limitation on duration of voyage and not a stated period of employment, and hence injured seaman was not entitled to wages for 12 months, extending beyond date of completion of actual voyage. *Farrell v. U. S.*, N.Y.1949, 69 S.Ct. 707, 336 U.S. 511, 93 L.Ed. 850.

Where shipping articles signed by messman conformed with terms of agreement between shipping company and authorized bargaining agent, and messman had received some payments under the articles, which were not attacked for fraud, the articles were controlling as to wages, bonus, etc., and mere finding that shipping commissioner told messman he would receive \$100 bonus until he returned to New York was insufficient to make such statement part of employment contract. *Montoya v. Tide Water Associated Oil Co.*, C.A.N.Y. 1949, 174 F.2d 607, certiorari denied 70 S.Ct. 89, 338 U.S. 847, 94 L.Ed. 518.

A seaman discharged in accordance with and paid wages due under shipping articles could not recover additional wages and penalties where articles were reasonable and not in violation of law. *The Seastrain New Orleans*, C.C.A. La.1942, 127 F.2d 878.

In action for seamen's wages, purported articles not executed and filed in accordance with law were void. *The Lily*, C.C.A.Cal.1934, 69 F.2d 898.

Provision of shipping articles, making any change in working rules and wages retroactive, was not applicable to arbitrary reduction of wages. *The Howick Hall*, D.C.La.1925, 10 F.2d 162.

Arbitration contracts, making award in future disputes conclusive, were void, especially in case of seamen's wage contracts. *Id.*

Where, at the time the term of service of seamen expired, the vessel was in a foreign port, where no consul was available, and no demand was made by the crew to go to a consul port to settle a wage dispute as provided in the shipping articles the master properly proceeded to the port of destination. *Shanley v. U. S.*, C.C.A.N.Y.1923, 294 F. 502.

A provision in shipping articles, providing that the wages named were subject to change in accordance with a new scale to be adopted by shipowners, was invalid, as not complying with the statute requiring the articles to state the wages to be paid, notwithstanding this section, providing that the articles may

contain stipulations in reference to advance and allotment of wages, or other matters not contrary to law. *Jones v. U. S.*, D.C.Md.1922, 284 F. 721.

A provision of a contract for seamen's services that "the crew shall make no claim for wages or provisions while the vessel is detained by ice prior to departure" was reasonable, and not in violation of this section. *The Lillian*, D.C. Pa.1904, 131 F. 375. See, also, *The Joseph B. Thomas*, D.C.Pa.1905, 136 F. 693, affirmed 148 F. 762.

When a seaman, by written instrument, agreed that if discharged the wages due him should be payable on the next regular pay day of his employer, and on being discharged commenced suit for his wages without waiting for such pay day, the suit was premature. *Smith v. The Columbus*, D.C.N.Y.1890, 43 F. 686.

Seamen were bound by shipping articles under which they were to receive certain share of salmon caught, and were not entitled to wages where expedition ended disastrously. *The Lottie Bennett*, D.C.Cal.1933, 3 F.Supp. 784.

Rule of ascertaining rate of wages of seamen, where the contract is doubtful, applied in case of an engineer on inland waters. *The Pioneer*, D.C.Or.1884, Fed. Cas.No.11,177.

Where the articles were for a voyage from San Francisco to Calcutta, and no wages were named, evidence was admissible to show that the contract was for a voyage from San Francisco to Boston, via Calcutta, at an agreed rate of wages. *Sheffield v. Page*, D.C.Mass.1855, Fed.Cas. No.12,743.

Where a crew shipped for a voyage, and articles were regularly executed, fixing the rate of wages and at an intermediate port they compelled the master, by threats of desertion, to enter into new articles at a higher rate of wages, such articles were void for want of consideration, the seamen having no right to abandon the voyage, and were contrary to the policy of section 574, of this title, and as holding out inducements, if established, to a violation of duty and of contract. *Bartlett v. Wyman*, 1817, 14 Johns. 260.

25. Transportation

Where shipping articles provided for no more than a return back to a "port of discharge in the United States," and seaman after being injured in foreign port is returned to San Francisco and he pays cost of transportation to port of shipment, such cost cannot be recovered from owner of vessel. *Ellis v.*

American Hawaiian S. S. Co., C.C.A.Cal. 1948, 165 F.2d 999.

A provision in shipping articles, on ship which commenced her voyage at Seattle, that in case she did not return to a Pacific port such seamen as desired would be furnished "return transportation to Seattle," with subsistence, did not entitle seamen who signed on in England to transportation to Seattle from New York, where the voyage ended. McDonald v. U. S., C.C.A.N.Y.1923, 292 F. 593.

Where a crew signed shipping articles in New York for a voyage to the Western Hemisphere and back to a port of discharge in the United States, the questions of wages, transportation, and work conditions being left for the determination of a designated conference of shipowners, and at Baltimore, to prevent the crew from abandoning the voyage the master indorsed on the articles an agreement entitling crew to transportation back to New York and \$5 a day subsistence, if discharged on the Pacific Coast, the Baltimore agreement was valid as against objections that it was without consideration and was made under compulsion. The Florence Olson, C.C.A.Cal.1922, 283 F. 11, certiorari denied 43 S.Ct. 98, 260 U.S. 740, 67 L.Ed. 490.

Where deck officers executed shipping articles, leaving the question of transportation to be determined by a designated shipowners' conference, a ruling made by that conference, entitling them to transportation and \$3 a day subsistence, is binding on all concerned. Id.

Where seamen signed for a voyage from New York to "one or more ports in South America * * * and such other ports or places in any parts of the world as the master may direct and back to a final port of discharge in the United States north of Cape Hatteras," and the ship fully discharged her cargo and reloaded at Tacoma and Seattle, and on refusal of the seamen to sign for a new voyage to Cuba discharged them, they were entitled to transportation to New York. Jenkins v. U. S. Emergency Fleet Corporation, D.C.Wash.1920, 268 F. 870.

26. Collective bargaining

Where provision of collective bargaining agreement entitling licensed officers to war bonus was to become operative only after vessel had entered a port east of 30 degrees west longitude and subsequent paragraph provided that in event of loss of vessel due to hostilities or warlike operation all licensed officers

would be furnished transportation to a United States port and for wages and war bonus, a reference back to first provision was necessary to determine amount of bonus and condition precedent for qualification for bonus, so that where vessel was destroyed before having entered a port east of 30 degree west longitude the officers were not entitled to war bonus. Mason v. Texas Co., C. A.Mass.1949, 171 F.2d 559, certiorari denied 69 S.Ct. 1156, 337 U.S. 915, 93 L.Ed. 1725.

Where the United States was not at war and its seamen were not being interned when collective bargaining agreement providing that in event of loss of vessel due to hostilities or warlike operations all licensed officers would be paid war bonus until day of arrival at United States port, the agreement was not intended to cover period of internment by an enemy. Id.

27. Minors, contracts of

Seamen, who were under 21 years when they signed shipping articles, were not bound thereby, and are entitled to their discharge and pay, although the period of employment under their contract is not ended. The Cubadist, D.C.Ala.1918, 252 F. 688.

Seamen, who were minors when they signed shipping articles, may disaffirm the contract and recover the reasonable value of the services rendered, regardless of the contract terms. Belyea v. Cook, D.C.Cal.1908, 162 F. 180.

An admiralty court will allow a minor to recover in his own name wages earned in sea service, when the contract on which he sues was made personally with him, and it does not appear that he has any parent or guardian or tutor entitled to receive his earnings. Following Kelly v. The Topsy, D.C.S.C.1890, 44 F. 631.

Where four months after coming of age a minor filed a petition to become colibellant in a libel by certain seamen of a vessel, under their written contract for wages, in which petition nothing was said in regard to his minority, it appeared that he was neither intelligent nor provident, but that, having heard that his associates had brought a suit for wages, he obtained the services of the lawyer who was acting for the rest, there was not sufficient evidence of intelligent action to show a ratification of the contract. Burdett v. Williams, D.C.Conn.1887, 30 F. 697.

A minor's fraudulent misrepresentation to a shipping commissioner for a vessel that he is of age does not estop

him from avoiding his written contract for compensation and recovering pay on a quantum meruit. *Id.*

In an action by a father for wages of his son as seaman on a whaling voyage under articles made during the minority of the son with the consent of the father, the measure of damages is the son's proportion of the oil taken during the minority. *Coffin v. Shaw*, D.C.Mass.1856, Fed.Cas.No.2,952, affirmed Fed.Cas.No.2,951. See, also, *Lovrein v. Thompson*, D.C.Mass.1857, Fed.Cas.No.8,557.

28. Insurance

Where tug owner was not a signatory to document called "Statement of Principles" leading to creation of Maritime War Emergency Board, the rulings of such Board were not binding on tug owner who was therefore not affected by order of Board requiring seaman insurance, etc. *Timbs v. Southern Transp. Co.*, C.A.Va.1948, 170 F.2d 854, certiorari denied 69 S.Ct. 739, 336 U.S. 931, 93 L.Ed. 1091.

Under a cover note and policy insuring lives and personal effects of ship's

officers and crew, which provided that, in absence of designation of named beneficiary, payment should be made to executor and administrator, where deceased officer of ship which was lost at sea did not designate any beneficiary in policy, insurance money was properly paid to his wife and administratrix to exclusion of his mother, as against claim that designation of mother's name and address in shipping articles in place prescribed for "Address of Wife or Next of Kin" was "designation of" mother as "beneficiary" within policy. *Poss v. Craven*, Fla.1943, 15 So.2d 671.

29. Review

A clarification order as to who was bound by a decision of the Maritime War Emergency Board was not invalid for lack of hearing in view of fact that hearing was required only when order was made to resolve differences between operator and union and that clarification order was not issued to resolve any such differences. *Timbs v. Southern Transp. Co.*, C.A.Va.1948, 170 F.2d 854, certiorari denied 69 S.Ct. 739, 336 U.S. 931, 93 L.Ed. 1091.

§ 565. Rules for shipping articles

The following rules shall be observed with respect to agreements:

First. Every agreement, except such as are otherwise specially provided for, shall be signed by each seaman in the presence of a Coast Guard official to whom the duties of shipping commissioner have been delegated.

Second. When the crew is first engaged the agreement shall be signed in duplicate, and one part shall be retained by such Coast Guard official, and the other part shall contain a special place or form for the description and signatures of persons engaged subsequently to the first departure of the ship and shall be delivered to the master.

Third. Every agreement entered into before such Coast Guard official shall be acknowledged and certified under the hand and official seal of such Coast Guard official. The certificate of acknowledgment shall be indorsed on or annexed to the agreement; and shall be in the following form:

"State of ———, County of ———:

"On this ——— day of ———, personally appeared before me, a Coast Guard official in and for the said county, A. B., C. D., and E. F., severally known to me to be the same persons who executed the foregoing instrument, who each for himself acknowledged to me that he had read or had heard read the same; that he was by me made acquainted with the conditions thereof, and understood the same;

and that, while sober and not in a state of intoxication, he signed it freely and voluntarily, for the uses and purposes therein mentioned." R.S. § 4512; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Derivation. Act June 7, 1872, c. 322, § 13, 17 Stat. 265.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury De-

partment, but such Plan excepted from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

References to shipping commissioner were changed to Coast Guard official to whom the duties of shipping commissioner have been delegated on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Cross References

Application of section to sail or steam vessels engaged in coastwise trade, see section 564 of this title.

Shipping agreements for coastwise trade and trade with Canada, Newfoundland, West Indies, and Mexico, to be made with crew as provided by this section, see section 563 of this title.

Notes of Decisions

Generally 1 Signing articles

1. Generally

This section does not apply to a British vessel. *The Montapedia*, D.C.La. 1882, 14 F. 427.

This section refers only to the agreements mentioned in section 564 of this title. *The Grace Lothrop*, C.C.Mass. 1874, Holmes 342, Fed. Cas. No. 5,653, affirmed 95 U.S. 527, 5 Otto 527, 24 L.Ed. 514.

A voyage between the West Indies and the United States is not within this section. *Id.*

2. Signing articles

Shipping articles, signed by master and members of crew of ship in shipping commissioner's presence, as required by this section, constitute employment contract and bind, not only master individually, but ship which he commands and owner thereof, to pay seamen's

wages, and owner, as well as master, is liable for seaman's wrongful discharge. *Aird v. Weyerhaeuser S. S. Co.*, C.A.Pa. 1943, 169 F.2d 606, certiorari denied 69 S.Ct. 1521, 337 U.S. 959, 93 L.Ed. 1758.

Regulation of Secretary of Commerce, requiring seamen to produce continuous discharge books to shipping commissioner before signing articles of agreement was authorized, reasonable and valid. *Johnson v. Rylander*, D.C.Cal. 1937, 18 F. Supp. 689.

In view of valid regulation of Secretary of Commerce requiring seamen to produce continuous discharge book to shipping commissioner before signing articles of agreement, seamen were not entitled to mandatory injunction to force shipping commissioner to acknowledge and certify articles, regardless of whether seamen had continuous discharge books. *Id.*

Where a steamship ships a crew under articles executed before a notary public, it is a violation of Act June 7, 1872, incorporated in part in this section, and

the ship incurs the penalty provided therein. *The City of Mexico*, D.C.N.Y. 1873, Fed.Cas.No.2,756, affirmed Fed.Cas. No.14,797.

Seamen who sign articles without reading them, after their services have commenced under an oral contract, will not be bound by the written agreement. *Sweeney v. Cloutman*, C.C.Mass.1862, Fed. Cas.No.13,685.

If the articles are signed under duress they are invalid. *Mayshew v. Terry*, D. C.Mass.1861, 1 Sprague, 584, Fed.Cas.No. 9,361. See, also, *Stratton v. Babbage*, D.C.Mass.1855, 18 Law.Rep. 94, Fed.Cas. No.13,527.

New shipping articles at reduced wages, signed by colored seamen, under protest, in a port where they are obliged to remain in jail or on board the vessel while she stays there, are not binding. *Stratton v. Babbage*, D.C.Mass.1855, Fed. Cas.No.13,527.

It is not necessary that a seaman shipping in a foreign port should sign articles. *Gladding v. Constant*, D.C.Mass. 1844, Fed.Cas.No.5,468.

In an admiralty proceeding by seamen against a vessel for wages claimed to be due them, the failure to have inserted in the shipping articles, before they were executed before a United States shipping commissioner, the time each seaman was to be on board to begin work, in violation of section 564 of this title, as amended by section 563 of this title, and of this section and sections 576 and 591 of this title, will justify a decision in favor of libelants, where the testimony is evenly balanced as to the time the men were required to be on board. *The Shetland v. Johnson*, 1903, 21 App.D.C. 416.

It is not competent for the master to fill up blank spaces left in the shipping articles, so as to bind the seaman, as such articles constitute a contract for wages. *Id.*

§ 566. Exception as to shipping articles

Section 564 of this title shall not apply to masters of vessels where the seamen are by custom or agreement entitled to participate in the profits or result of a cruise or voyage, nor to masters of coastwise nor to masters of lake-going vessels that touch at foreign ports; but seamen may, by agreement, serve on board such vessels a definite time, or, on the return of any vessel to a port in the United States, may reship and sail in the same vessel on another voyage. R.S. § 4513; Feb. 27, 1877, c. 69, § 1, 19 Stat. 252.

Historical Note

Derivation. Acts June 7, 1872, c. 322, § 12, 17 Stat. 264; Feb. 27, 1877, c. 69, 19 Stat. 252.

Codification. The words "without the payment of additional fees to the shipping commissioner, by either the seamen or the master," were included at end of

section as enacted originally. They were omitted as superseded by section 331 of this title.

Act Feb. 27, 1877 struck out "The preceding section" at beginning of R.S. § 4513.

Notes of Decisions

1. Exemption upon reshipment

The seaman's exemption under the original text of this section from payment of fees on his reshipment applied to a reshipment for all voyages succeeding the first one in regular order. *Young v. American S. S. Co.*, Pa.1882, 105 U.S. 41, 15 Otto 41, 26 L.Ed. 986.

Where a United States shipping commissioner charged a seaman who had

paid the shipping fee an additional fee every time he reshipped on the same vessel for successive subsequent voyages, such charge was unauthorized by the Acts of Congress, and the fees thus named might be recovered back in an action of assumpsit. *American Steamship Co. v. Young*, 1879, 89 Pa. 186, affirmed 105 U.S. 41, 15 Otto 41, 26 L.Ed. 986.

§ 567. Penalty for shipping without agreement

If any person shall be carried to sea, as one of the crew on board of any vessel making a voyage as hereinbefore specified, without entering into an agreement with the master of such vessel, in the form and manner, and at the place and times in such cases required, the vessel shall be held liable for each such offense to a penalty of not more than \$200. But the vessel shall not be held liable for any person carried to sea, who shall have secretly stowed away himself without the knowledge of the master, mate, or of any of the officers of the vessel, or who shall have falsely personated himself to the master, mate, or officers of the vessel, for the purpose of being carried to sea. R.S. § 4514.

Historical Note

Derivation. Act June 7, 1872, c. 322, § 14, 17 Stat. 265.

Notes of Decisions

1. Stowaways

A stowaway was required by the master to sign shipping articles for the voyage, and was later severely injured.

Master was without authority to pledge the credit of the vessel for his treatment. *The Laura Madsen*, D.C. Wash. 1901, 112 F. 72.

§ 568. Penalty for knowingly shipping seamen without articles

If any master, mate, or other officer of a vessel knowingly receives, or accepts, to be entered on board of any merchant vessel, any seaman who has been engaged or supplied contrary to the provisions of title 53 of the Revised Statutes, the vessel on board of which such seaman shall be found shall, for every such seaman, be liable to a penalty of not more than \$200. R.S. § 4515.

Historical Note

Derivation. Act June 7, 1872, c. 322, § 14, 17 Stat. 265.

References in Text. For distribution of title 53 of the Revised Statutes, referred to in the text, see note under section 543 of this title.

Cross References

Application of section to sail or steam vessels engaged in coastwise trade, see section 544 of this title.

Notes of Decisions

"Engagement" of seaman 1 Voyages under section 3

1. "Engagement" of seaman

Any hiring of a seaman may be called engaging him, and he is engaged when

he is contracted with, the word has that meaning in some parts of our shipping acts and in some parts of the Merchant Shipping Act, set forth in this title, it cannot have it in this section, because the statutes provide that the written contract or "engagement" in that broad sense is to be made at any time

before the vessel proceeds to sea; therefore, no oral agreement can be illegal until the last moment has elapsed in which a written engagement must be made, which is the moment before the anchor is weighed. *U. S. v. The Thomas W. Haven*, C.C.Mass.1880, 3 F. 347.

The offense of receiving on board ship a seaman who has been engaged contrary to this chapter, is an impossible one, because there is nothing in this chapter which requires an engagement to be made before the seamen are received on board. *Id.*

2. Voyages under section

This section has no application to coasting voyages. *United States v. The Thomas W. Haven*, C.C.Mass.1880, 3 F. 347.

An agreement with a seaman on a voyage from New York to a port in Mexico is required under section 574 of this title, in the form prescribed and under the penalty provided by this section. *U. S. v. The City of Mexico*, C.C. N.Y.1874, Fed.Cas.No.14,797.

The clause which provides for penalty for receiving to be entered on board a merchant ship any seaman engaged or supplied contrary to the provisions of the title, does not refer to seamen who have agreed to make a voyage not mentioned in section 564 of this title, and have not signed the agreement in the presence of a shipping commissioner. *The Grace Lothrop*, C.C.Mass.1874, Holmes 342, Fed.Cas.No.5,653, affirmed 95 U.S. 527, 5 Otto 527, 24 L.Ed. 514.

§ 569. Shipping seamen to replace those lost by desertion or casualty

In case of desertion or casualty resulting in the loss of one or more of the seamen, the master must ship, if obtainable, a number equal to the number of those whose services he has been deprived of by desertion or casualty, who must be of the same or higher grade or rating with those whose places they fill, and report the same to the United States consul at the first port at which he shall arrive, without incurring the penalty prescribed by sections 567 and 568 of this title. This section shall not apply to fishing or whaling vessels or yachts. R.S. § 4516; Dec. 21, 1898, c. 28, §§ 1, 26, 30 Stat. 755, 764; Mar. 4, 1915, c. 153, § 1, 38 Stat. 1164.

Historical Note

Derivation. Act June 7, 1872, c. 322, § 14, 17 Stat. 265.

Codification. Act Mar. 4, 1915, amended section to read as set forth above.

Act Dec. 21, 1898, amended R.S. § 4516 to read: "In case of desertion or casualty resulting in the loss of one or more seamen, the master must ship, if obtainable, a number equal to the number of those whose services he has been deprived of by desertion or casualty, who must be of the same grade or rating and equally expert with those whose place or position they refill, and report the same to the United States consul at the first port at which he shall arrive, without incurring the penalty prescribed by the two preceding sections."

R.S. § 4516, as enacted originally, read: "In case of desertion, or of casualty resulting in the loss of one or more seamen, the master may ship a number equal to the number of whose services he has been deprived by desertion or casualty, and report the same to the United States consul at the first port at which he shall arrive, without incurring the penalty prescribed by the two preceding sections."

Exception. Section 26 of Act Dec. 21, 1898, provided that that act should apply to all vessels not specifically exempted, but sections 569, 576, 593, 596, 597, 599, 604, 653-656, 658, 663, 665, 669, 713 of this title should not apply to fishing or whaling vessels or yachts.

Notes of Decisions

Generally 1
Replacement 2

1. Generally

Seaman, who shipped as steward's helper at rate of 25 cents per month and signed shipping articles to that effect, was not shipped in violation of section 564 of this title, and this section, requiring master to make agreement in writing with every seaman whom he carries as one of crew, though he actually served as able seaman rather than as steward's helper. *Buckley v. Oceanic S. S. Co.*, C.C.A.Cal.1925, 5 F.2d 545.

Every sailor on an American vessel is an "American seaman," within this section regardless of his nationality. *The Laura M. Lunt*, D.C.La.1909, 170 F. 204.

2. Replacement

That the master of a vessel failed to replace a second mate who had been

paid off at an intermediate port, as required by this section, was no excuse for the total refusal of members of the crew to work the vessel, and was therefore no defense to the master's right to punish them for their disobedience. *The Cora F. Cressy*, D.C.Mass.1904, 131 F. 144.

Where a seaman employed by a master during a voyage to take the place of one discharged by reason of illness, although not of the same grade as the one whose place he took, as required by this section, was able to perform the work to the satisfaction of the master, and no complaint was made by the other seamen, the latter were not justified, by reason of such employment, in leaving the ship at an intermediate port, and by their desertion forfeited their right to recover wages. *The Moonlight*, D.C.N.Y. 1903, 125 F. 429.

§ 570. Shipping seamen in foreign ports

Every master of a merchant vessel who engages any seaman at a place out of the United States, in which there is a consular officer shall, before carrying such seaman to sea, procure the sanction of such officer, and shall engage seamen in his presence; and the rules governing the engagement of seamen before a Coast Guard official to whom the duties of shipping commissioner have been delegated in the United States, shall apply to such engagements made before a consular officer; and upon every such engagement the consular officer shall indorse upon the agreement his sanction thereof, and an attestation to the effect that the same has been signed in his presence, and otherwise duly made. R.S. § 4517; Apr. 5, 1906, c. 1366, § 3, 34 Stat. 100; 1946 Reorg.Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Derivation. Act June 7, 1872, c. 322, § 15, 17 Stat. 268.

Codification. Act Apr. 5, 1906, abolished the grade of commercial agent and eliminated the words "or commercial agent" after the words "commercial officer" in R.S. § 4517.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department,

were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally

a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

Reference to shipping commissioner was changed to Coast Guard official to

whom the duties of shipping commissioner have been delegated on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Notes of Decisions

1. Generally

Shipowner who, at foreign port, employed seaman who neither understood nor spoke English and lacked experience with American indirect helm orders failed properly to man vessel, which was therefore not seaworthy, precluding exemption from liability for cargo damage caused by collision occurring when such seaman, while acting as helmsman, apparently misunderstood order given in English. *The Nordpol*, C.C.A.N.Y. 1936, 84 F.2d 3, certiorari denied 57 S.Ct. 111, 299 U.S. 586, 81 L.Ed. 432.

This section which follows 17 & 18 Vict. c. 104, and enacts that merchant ships of the United States who engage seamen at any place out of the United States shall enter into the engagement with the sanction of the consular officers of the United States according to that act of congress, does not apply to a British vessel, and the United States courts will not take jurisdiction of a suit against a British vessel by seamen who shipped at a port in this country. *The Montapedia*, D.C.La. 1882, 14 F. 427.

§ 571. Penalty for violating section 570 of this title

Every master who engages any seaman in any place in which there is a consular officer, otherwise than as required by section 570 of this title, shall incur a penalty of not more than \$100, for which penalty the vessel shall be held liable. R.S. § 4518; Apr. 5, 1906, c. 1866, § 3, 34 Stat. 100.

Historical Note

Derivation. Act June 7, 1872, c. 322, § 15, 17 Stat. 265.

Codification. Act Apr. 5, 1906, eliminated the words "or commercial agent" after the words "consular officer."

§ 572. Voyage or term for which seamen may be shipped; reshipment

A master of a vessel in the foreign trade may engage a seaman at any port in the United States, in the manner provided by law, to serve on a voyage to any port, or for the round trip from and to the port of departure, or for a definite time, whatever the destination. The master of a vessel making regular and stated trips between the United States and a foreign country may engage a seaman for one or more round trips, or for a definite time, or on the return of said vessel to the United States may reship such seaman for another voyage in the same vessel, in the manner provided by law. June 26, 1884, c. 121, § 19, 23 Stat. 58.

Historical Note

Codification. Section was part of the Shipping Act of June 26, 1884.

Words "without the payment of additional fees to any officer for such re-

shipment or re-engagement" at end of section as enacted originally, were omitted as superseded by section 331 of this title.

Notes of Decisions

Fees of commissioner 1
Period of employment 3
Reshipment 2

voyage if they desired, but did not ask and did not desire to do so. *Pikna v. The Telfair Stockton*, C.A.Va.1949, 174 F.2d 472.

1. Fees of commissioner

Shipping commissioner is entitled to fees for shipping seamen on vessel engaged in the carrying trade on a navigable river and such vessel is "engaged in the coastwise trade" under Act June 19, 1886. *Ravesies v. U. S.*, C.C.Ala.1889, 37 F. 447.

2. Reshipment

Refusal to award damages for refusal to permit seamen to re-ship for another voyage was warranted by evidence that seamen could have signed for another

3. Period of employment

Along with the obligation of shipowner to provide maintenance and cure to seaman who becomes ill during voyage, the maritime law attaches to the seaman's contract of employment the right to receive his agreed wages throughout the "period of employment," which historically has meant to the end of the voyage, but now includes full wages throughout the period of employment whether employment is for a voyage or for a definite time. *Vitco v. Joncich*, D. C.Cal.1955, 130 F.Supp. 945, affirmed 234 F.2d 161.

§ 573. Voyage or term of seaman shipped in foreign port; reshipment; bond

Every master of a vessel in the foreign trade may engage any seaman at any port out of the United States, in the manner provided by law, to serve for one or more round trips from and to the port of departure, or for a definite time, whatever the destination; and the master of a vessel clearing from a port of the United States with one or more seamen engaged in a foreign port as herein provided shall not be required to reship in a port of the United States the seamen so engaged, or to give bond, to produce said seamen before a boarding officer on the return of said vessel to the United States. June 26, 1884, c. 121, § 20, 23 Stat. 58.

Historical Note

Codification. Section was part of Shipping Act of June 26, 1884.

As enacted originally, the words "or to give bond" were followed by the words "as required by section forty-five hun-

dred and seventy-six of the Revised Statutes." R.S. § 4576 was amended by Act Mar. 3, 1897, c. 389, § 3, 29 Stat. 683, so as to eliminate the requirement for a bond.

Cross References

Production of copy of list of crew before boarding officer on return of vessel, see section 677 of this title.

§ 574. Shipping articles for vessels in coasting trade

Every master of any vessel of the burden of fifty tons or upward, bound from a port in one State to a port in any other than an adjoining State, except vessels of the burden of seventy-five tons or upward, bound from a port on the Atlantic to a port on the Pacific, or vice versa, shall, before he proceeds on such voyage, make an agreement in writing or in print, with every seaman on board such vessel except such as shall be apprentice or servant to himself or owners, declaring the voyage or term of time for which such seaman shall be shipped. R.S. § 4520.

Historical Note

Derivation. Acts July 20, 1790, c. 29, § 1, 1 Stat. 131; June 7, 1872, c. 322, § 12, 17 Stat. 264.

Notes of Decisions

Generally 3
Construction of articles 4
Description of voyages under section
Prior law 1
Signing of articles 6
State 2
Voyages under section 7, 8
Description 8
Writing as necessary 5

States. In re Bryant, D.C.Or.1865, Fed. Cas.No.2,067.

3. Generally

Where seaman's employment contract covered whole period of Great Lakes season, and presumably presupposed that "Articles", customary in maritime contracts of service, would be signed each month by seaman and ship's master, execution of monthly "Articles" was a performance of the continuous employment for season and "Articles" did not supersede seaman's employment contract. *Harriman v. Midland Steamship Line, Inc.*, C.A.N.Y.1953, 208 F.2d 564.

Provision in articles of agreement between fishermen and packing association for salmon fishing season in Alaskan waters to subordinate agreement to law did not make provisions of this section applicable to such fishermen's rights. *Ahlquist v. Alaska-Portland Packers' Ass'n*, C.C.A.Or.1930, 39 F.2d 348.

The wife of a cook on board a vessel, engaged as second cook, is a part of the crew, and it is the duty of the master to make an agreement reduced to writing and signed by her as provided in this section. *The James H. Shrigley*, D.C.N.Y.1892, 50 F. 287.

Articles signed by seamen are primarily for protection of seamen against owner of vessel, and seamen were not in a position to contend that a practice of ignoring the articles which required the seamen to stand by the ship until the voyage was completed had nullified the law providing for forfeiture of all or any part of seamen's wages on desertion from ship. *Barfield v. Standard Oil Co.*, et

1. Prior law

Act July 20, 1790 from which this section is in part derived, requiring a written contract on the shipment of seamen, was not repealed by Act June 7, 1872 from which this section is also in part derived. *The City of Mexico*, D.C.N.Y. 1873, Fed.Cas.No.2,756, affirmed Fed.Cas. No.14,797.

R.S. § 4598, repealed, with reference to seamen absenting themselves from vessels without leave from the proper officer, when their contract to perform the voyage is signed before a shipping commissioner did not apply to seamen or vessels engaged in the coastwise trade unless, as under this section, such vessel was of 50 tons burden or upward. 1897, 21 Op.Atty.Gen. 483.

2. State

This section is only applicable to voyages from a port in one state to a port "in any other than an adjoining state." Illinois and Michigan are "adjoining states" within the meaning of the section. *Thorson v. Peterson*, D.C.Ill.1881, 9 F. 517.

The term "state," as used in this section, includes a territory of the United

New Jersey, 1939, 14 N.Y.S.2d 627, 172 Misc. 95.

4. Construction of articles

Shipping articles, when in doubt, are most strongly construed against ship. *The Thomas Tracy*, C.C.A.N.Y.1928, 24 F.2d 372.

Shipping articles, though entitled to liberal construction, may reserve latitude for events subsequently arising from exigencies of trade. *Id.*

5. Writing as necessary

Where two distinct contracts for service on two distinct voyages are made at the same time, and one only is reduced to writing, the other may be proved by parol. *Page v. Sheffield*, C.C.Mass.1855, 2 Curt. 377, Fed.Cas.No.10,687.

The contract must be in writing where the vessel is engaged in a general coasting and trading voyage between ports in different states. *The Crusader*, D.C.Me. 1837, Fed.Cas.No.3,456.

6. Signing of articles

The service of each sailor on a merchant vessel begins with the signing of the shipping articles. *Weaver v. Pittsburgh S. S. Co.*, C.C.A.Ohio 1946, 153 F.2d 597, certiorari denied 66 S.Ct. 1351, 328 U.S. 858, 90 L.Ed. 1630.

This section and section 578 of this title, are for the benefit of seamen, and place on the master the duty to see that articles are executed in compliance therewith, and while section 578 declares a shipment without such articles void, the employer cannot avoid the contract on that ground, especially where services were rendered thereunder and paid for. *Lent Traffic Co. v. Gould*, C.C.A.Pa.1924, 2 F.2d 554.

Where the mate of a vessel of more than 50 tons burden, engaged in the coasting trade, had general authority to hire seamen, and engaged libelants to serve as members of the crew on a certain voyage, without making any agreement with them with respect to their wages, and they were received on board by the mate as members of the crew, and treated as such while at an intermediate port, without having ever assented to any contract to work for their passage without other compensation, it was the duty of the master to require libelants to sign shipping articles for the voyage before carrying them to sea, as required by this section and section 563 of this title; and hence such libelants were entitled to recover the highest rate of wages paid at the port of departure for the

time of their actual service, as provided by sections 575 and 578 of this title. *The Elihu Thompson*, D.C.Wash.1905, 139 F.89.

Under this section and section 575 of this title, a seaman on a coasting voyage, not having signed articles, could leave the vessel without incurring any forfeiture of wages. *The Lizzie M. Dun*, D.C.N.Y.1887, 30 F.927.

Shipping articles are required to be signed under this section; and though their correctness may be attacked, and they may be shown by parol to be incorrect, fraudulent, or void, unless this be satisfactorily established the seamen will be held bound by the terms prescribed in them, there must be clear and satisfactory proof of either fraud or mistake to justify the court in disregarding them. *The Elvine*, D.C.N.Y. 1884, 19 F.528.

There is nothing in the statutes which requires a contract to be made before the seamen are received on board. *U. S. v. The Thomas W. Haven*, C.C.Mass. 1880, 3 F.347.

The articles must be signed before leaving the port of departure, and if not so signed, the shipment is void by the express language of section 578 of this title. *The Theodore Perry*, D.C.Mich. 1878, 24 Int.Rev.Rec. 54, Fed.Cas.No.13,-880.

Written articles signed by seamen setting forth voyage and term of service were mandatory upon captain of vessel and, had such articles not been signed, seamen might have deserted vessel with immunity from forfeitures and penalties. *Barfield v. Standard Oil Co. of New Jersey*, 1939, 14 N.Y.S.2d 627, 172 Misc. 95.

7. Voyages under section

This section providing that master of any vessel of burden of over fifty tons bound from Atlantic or Pacific port must make an agreement in writing with every seaman on board declaring voyage or term at time for which seaman shall be shipped, and section 594 of this title allowing seaman discharged before commencement of voyage to recover one month's wages as compensation, were inapplicable to seaman employed on vessel engaged in trade on Great Lakes. *Harriman v. Midland Steamship Line, Inc.*, C.A.N.Y.1953, 208 F.2d 564.

This section, and sections 575, 713 of this title concerning merchant seamen and relating to shipping commissioners, shipment of crews, wages, protection, release and discharge of seamen, and the

like are applicable to shipping on the Great Lakes. *Weaver v. Pittsburgh S. S. Co.*, C.C.A.Ohio 1946, 153 F.2d 597, certiorari denied 66 S.Ct. 1351, 328 U.S. 858, 90 L.Ed. 1630.

A shipping agreement was not violative of this section, being understood by owners and crew that the voyage was to be a whaling voyage if a full freight was not found. *Burdett v. Williams*, D.C.Conn.1886, 27 F. 113.

This section and section 578 of this title providing that masters of vessels shall before the voyage make an agreement in writing with every seaman on board, declaring the term for which said seaman shall be shipped, applied to the hiring of seamen on vessels navigating rivers of the interior states. *The Pacific*, D.C.Pa.1885, 23 F. 154.

The provisions of the law requiring shipping articles apply to lake navigation. *The Theodore Perry*, D.C.Mich. 1878, 24 Int.Rev.Rec. 54, Fed.Cas.No.13,880. See, also, *Wolverton v. Lacey*, D.C.Ohio 1856, 18 Law.Rep. 672, Fed.Cas.No. 17,932.

The master of a vessel making a voyage from New York to a port in Mexico is required by this section to make the agreement therein specified, and is also required to see that such agreement is signed, acknowledged, and certified before a shipping commissioner and such vessel is liable to the penalty provided if her master receives a seaman on board who had been engaged otherwise than under an agreement so signed, acknowledged, and certified. *U. S. v. The Steamship City of Mexico*, C.C.N.Y.1874, 11 Blatchf. 489, Fed.Cas.No.14,797.

A tug engaged in towing between Lake Erie and Lake Huron is not within the

meaning of this section, prescribing the contract of shipment to be entered into. *The John Martin*, D.C.Mich.1870, Fed.Cas.No.7,357.

Whaling voyage is not within this section. *The Atlantic*, D.C.N.Y.1849, Fed.Cas.No.620. See, also, *Burdett v. Williams*, D.C.Conn.1886, 27 F. 113.

8. — Description

Shipping articles, attempting to describe voyage and referring to time not exceeding six months, were subject to construction as employment for one voyage. *The Thomas Tracy*, C.C.A.N.Y.1928, 24 F.2d 872.

Shipping articles providing for a "voyage from Philadelphia to Galveston and one or more ports in the United States, for a term not exceeding two months," stipulate for one voyage only, and not for one or more, and, a voyage having been made to Galveston and thence to Mobile, the seamen may there be discharged. *Dary v. The Caroline Miller*, D.C.Ala.1888, 36 F. 507.

Articles describing a voyage as "from Philadelphia to Portland, Maine; thence to some one or more ports east, if required by the master, and back to a western port of discharge, term not to exceed two months," are sufficiently definite. *U. S. v. Bain*, C.C.Ma.1880, 5 F. 192.

A description of the voyage as "from the port of Boston to Valparaiso, and from other ports in the Pacific Ocean, at and from thence home, direct, or via ports in the East Indies or Europe," did not comply with this section. *Snow v. Wope*, C.C.Mass.1855, Fed.Cas.No.13,149.

§ 575. Penalty for shipping without articles

If any master of such vessel of the burden of fifty tons or upward shall carry out any seaman or mariner, except apprentices or servants, without such contract or agreement being first made and signed by the seamen, such master shall pay to every such seaman the highest price or wages which shall have been given at the port or place where such seaman was shipped, for a similar voyage, within three months next before the time of such shipping, if such seaman shall perform such voyage; or if not, then for such time as he shall continue to do duty on board such vessel; and shall moreover be liable to a penalty of \$20 for every such seaman, recoverable, one-half to the use of the person prosecuting for the same, and the other half to the use of the United States. Any seaman who has not signed such

a contract shall not be bound by the regulations nor subject to the penalties and forfeitures contained in title 53 of the Revised Statutes. R.S. § 4521.

Historical Note

Derivation. Act July 20, 1790, c. 29, § 1, 1 Stat. 131.

References in Text. For distribution of title 53 of the Revised Statutes, referred to in the text, see note under section 543 of this title.

Notes of Decisions

Pleading 4

Purpose 1

Voyages under section

Wages 3

1. Purpose

The intention of this section is to make it to the interest of the owner of the boat to make a written or printed agreement with the seamen in order to avoid disputes as to the rate of wages, and the positive provisions of this section cannot be affected by the equities of the case. *The Lud Keefer*, D.C.Pa. 1892, 49 F. 650, modified on other grounds 51 F. 44, 2 C.C.A. 95.

2. Voyages under section

This section and sections 574, 713 of this title concerning merchant seamen and relating to shipping commissioners, shipment of crews, wages, protection, release and discharge of seamen, and the like are applicable to shipping on the Great Lakes. *Weaver v. Pittsburgh S. S. Co.*, C.C.A.Ohio 1946, 153 F.2d 597, certiorari denied 66 S.Ct. 1351, 323 U.S. 858, 90 L.Ed. 1630.

This section is inapplicable to voyages to Mexico. *The Lily*, C.C.A.Cal.1934, 69 F.2d 898.

This section did not apply to seamen upon tugboats. *Milligan v. The B. F. Bruce*, D.C.Mich.1857, Fed.Cas.No.9,602.

The provisions of this section imposing a penalty on masters of vessels in the merchant service for shipping seamen without articles, extend to the merchant marine upon the lakes and public navigable waters connecting the same. *Wolverton v. Lacey*, D.C.Ohio 1856, Fed. Cas.No.17,932.

This section which allows to seamen shipped without a written contract the highest rate of wages, does not apply to fishing voyages. *The Ianthe*, D.C.Me. 1856, Fed.Cas.No.6,992.

3. Wages

Where seamen go on board a vessel voluntarily, not having signed the shipping articles, they are not bound to continue in the service of the vessel during the voyage, nor for any definite term, but the master can require them to do work necessary to be done in the proper navigation of the vessel while she is at sea; such seamen are free to leave the vessel at any place, and having served as mariners they are entitled to receive compensation therefor, but not having any valid contract entitling them to be returned to a certain port, they have no just claim for expenses in so doing, nor for any compensation except wages while they were doing the work required of them. *The Occidental*, D.C.Wash.1900, 101 F. 997. See, also, *The Ianthe*, D.C.Me.1856, 3 Ware 126, Fed.Cas.No.6,992; *Graham v. The Exporter*, D.C.Ohio 1875, 21 Int.Rev.Rec. 110, Fed.Cas.No.5,667; *The Australia*, D.C.Me.1859, 3 Ware 240, Fed.Cas.No.667.

If it is to be assumed that a pilot of a steam vessel, who is a licensed and sworn officer, is a "seaman," within the meaning of this section and section 574 of this title, and that his hiring in consequence must be by shipping articles, yet he cannot, under these sections, recover the highest rate of wages paid to any seaman for a similar voyage during the three months preceding his hiring, unless his libel avers, or his proofs show, that the vessel on which he was employed was of the burden of 50 tons or upward. *Werling v. The Lud Keefer*, Pa.1892, 51 F. 44, 2 C.C.A. 95.

Pilot of steam vessel, if assumed to be a "seaman", cannot recover highest rate of wages of seaman for similar voyage during the three months preceding his hiring, unless libel avers or proofs show that vessel was of burden of 50 tons or upwards. *Id.*

Mariners are wards of the court, and as such are to be protected, not to the injury of the respondents, but to secure to mariners their just wages. *Rollins v.*

Notes of Decisions

Desertion 1

Report for duty by seaman 2
Shipping articles, blank spaces in

1. Desertion

Seamen become obligated to merchant vessels from the time they sign the shipping articles, and from that time may incur the penalties of desertion. *Tucker v. Alexandroff*, Pa.1902, 22 S.Ct. 195, 183 U.S. 424, 46 L.Ed. 264.

Minor alien seamen, ordered by immigrant inspector to ship on vessel bound for foreign port, were not "deserters," within this section, in leaving it without discharge. *Mystic S. S. Co. v. Stromland*, C.C.A.Va.1927, 20 F.2d 342, rehearing denied 21 F.2d 607, certiorari denied 48 S.Ct. 213, 276 U.S. 618, 72 L.Ed. 734.

The leaving of his ship by a seaman before completion of the voyage, and when the ship was in danger, with intent not to return, and his failure to return, constituted "desertion." *The Levi W. Ostrander*, D.C.Wash.1921, 291 F. 908.

The penalty of forfeiture prescribed in this section applied to seamen who deserted or escaped before the commencement of the voyage, and the fifth section of the Act from which this section is derived to those who absented themselves after its commencement. *Cotel v. Hilliard*, 1808, 4 Mass. 684.

2. Report for duty by seaman

Shipping articles, which required a seaman to report on board on a day named, but specified no hour, are to be construed most favorably to the seaman; and where he reported for duty on the day named, several hours before the time fixed for the vessel to sail, he will be held to have complied with the contract and the fact that, after the articles were signed, the master told him verbally to report at an earlier hour, cannot affect the construction of the contract. *The Alice Blanchard*, D.C.Cal.1899, 92 F. 519.

Where a seaman, who has signed shipping articles, went to his vessel, on her sailing day, intoxicated, and declined to go aboard, and the master, being pressed

for time, thereupon shipped another man, while the fact that he was drunk was not a sufficient ground for a rescission of his contract, his refusal to go aboard entitled the master to supply his place, and, when the place was filled, no subsequent application could help him. *Lyons v. The Grace Littleton*, D.C.S.C. 1892, 50 F. 285.

A seaman signing articles, and not reporting for duty at the stipulated time, or, if no time is fixed, within a reasonable time, may be discharged. *Smith v. Chase*, D.C.Me.1876, Fed.Cas.No.13,023.

The seaman loses his right to wages where, though especially requested, he made no attempt until the last moment to get aboard. *Smith v. The Utica*, D.C. N.Y.1844, Fed.Cas.No.13,123.

In the case of a special indulgence to a seaman, wages cannot be deducted for failure to render himself on board at the time appointed in the articles. *Thompson v. The Philadelphia*, D.C.Pa.1805, Fed.Cas.No.13,973.

Receiving a seaman on board after the time appointed does not remit the penalty for his neglect to render himself. *Malone v. Bell*, D.C.Pa.1805, Fed.Cas.No. 8,994.

3. Shipping articles, blank spaces in

Under section 564 of this title, as affected by section 563 of this title, and under this section and sections 565 and 591 of this title, it is not competent for the master to fill up blank spaces left in the shipping articles, so as to bind the seaman, as such articles constitute a contract for wages. *The Shetland v. Johnson*, 1903, 21 App.D.C. 416.

The failure to insert in shipping articles, before they are executed before a United States shipping commissioner, the time at which each seaman is to be on board to begin work, in violation of this section, cannot be justified on behalf of the vessel by an alleged custom not to make a memorandum of the time until it is definitely fixed after the execution of the articles, and in the meantime to leave a blank space therefor to be filled in by the master of the vessel on sailing, as no custom can be tolerated, which violates the law. *Id.*

§ 577. Posting copy of agreement

The master shall, at the commencement of every voyage or engagement, cause a legible copy of the agreement, omitting signatures, to be placed or posted up in such part of the vessel as to be accessible to the crew; and on default shall be liable to a penalty of not more than \$100. R.S. § 4519.

Historical Note

Derivation. Act June 7, 1872, c. 322, § 20, 17 Stat. 266.

Cross References

Application of section to crew in coastwise trade, or trade with Canada, Newfoundland, West Indies, or Mexico, see section 563 of this title.

Application of section to sail or steam vessels engaged in coastwise trade, see section 544 of this title.

§ 578. Unlawful shipments void

All shipments of seamen made contrary to the provisions of any act of Congress shall be void; and any seaman so shipped may leave the service at any time, and shall be entitled to recover the highest rate of wages of the port from which the seaman was shipped, or the sum agreed to be given him at his shipment. R.S. § 4523.

Historical Note

Derivation. Acts July 20, 1840, c. 48, § 5 Stat. 395; June 7, 1872, c. 322, § 15, 17 Stat. 265.

Notes of Decisions

Generally 1
Fishermen 4
Leaving vessel 5
Vessels under section 2
Wages 3

1. Generally

This section and section 574 of this title are for the benefit of seamen, and place on the master the duty to see that articles are executed in compliance therewith, and while this section declares a shipment without such articles void, the employer cannot avoid the contract on that ground, especially where services were rendered thereunder and paid for. *Lent Traffic Co. v. Gould*, C.C.A.Pa.1924, 2 F.2d 534.

This section is declaratory of the general rule that legal rights cannot be founded upon unlawful contracts. *The Troop*, D.C.Wash.1902, 117 F. 559, affirmed 125 F. 672, 60 C.C.A. 362.

2. Vessels under section

This section is applicable to seamen shipped in American ports on foreign vessels. *The Troop*, D.C.Wash.1902, 117 F. 557, affirmed 125 F. 672, 60 C.C.A. 362.

This section does not apply to the hiring of seamen on vessels navigating rivers of the interior states. *The Pacific*, D.C.Pa.1885, 23 F. 154.

3. Wages

The master of a vessel making a coastwise voyage between the Atlantic ports of the United States may act as shipping commissioner for the purpose of signing his crew, and hence this section could not be invoked by a seaman suing for wages on the ground that the shipping articles were void. *The William H. Clifford*, D.C.Pa.1908, 165 F. 59.

The advance payment of wages to a seaman, in violation of section 599 of this title, does not render the contract for service made by the shipping articles void, under this section, where it is

not shown that the unlawful payment entered into the contract as one of the things agreed on by the parties. *The Bound Brook*, D.C.Mass.1906, 146 F. 160.

Where a seaman on a lake vessel ships under a verbal agreement, and draws wages promised, he cannot recover a larger amount under this section. *The City of Fremont*, D.C.Wis.1871, Fed.Cas. No.2,746. See, also, *The Fremont*, D.C.Wis.1871, Fed.Cas.No.5,093.

While a seaman shipped contrary to the provisions of this chapter may leave the service at any time, yet where he does continue or is ready to continue in the service of the vessel and is prevented by the master, he is to be paid either the wages agreed upon, or the highest pay to any seaman shipped for the voyage. The master cannot discharge him at will. *Page v. Sheffield*, C.C.Mass.1855, 2 Curt. 377, Fed.Cas.No.10,667.

4. Fishermen

Fishermen who ship for a "lay," or shares in the catch, are not "seamen" in the sense of the word as used in this section so as to entitle them if "shipped contrary to the provision of any Act of Congress," to recover the highest rate of wages of the port from which they were shipped, *semble*, the section refers to "merchant seamen." *The Cornelia M. Kingsland*, D.C.N.Y.1885, 25 F. 856.

The shipping of fishermen by oral agreement, and on terms different from section 531 of this title, is not contrary to law, in the sense of this section. *Id.*

5. Leaving vessel

The fact that the master of a vessel took possession of notes given by seamen to a boarding house keeper after the signing of shipping articles, and held the same with the intention of paying them on the discharge of the seamen, if on inquiry it was found to be legal, did not constitute a violation of section 599 of this title, prohibiting advancements to seamen, nor render the shipment void so as to entitle the seamen to quit before the expiration of the term under this section, where the amount was not charged to the seamen nor any agreement made to pay the notes. *The Albani*, D.C.Pa.1809, 189 F. 220.

Section 599 of this title, which prohibits the payment of advance wages to seamen, and is in express terms made applicable to foreign vessels where there is no conflicting treaty provision, is applicable to a case of the shipment of seamen on a British vessel in an American port; and by virtue of this section

such seamen, to whom an advance was made on signing the articles, may leave the service at any time, and recover wages for the time served, and their right is not affected by their waiver of any claim to recover the sums advanced. *The Alnwick*, D.C.N.Y.1904, 132 F. 117.

Under this section a contract for service on a British ship made in an American port, by which the seaman was paid wages in advance, in violation of section 599 of this title, is void, and the seaman may leave the service at any time, and recover full wages for the time served, without deduction on account of the advance. *Kenney v. Blake*, Wash.1903, 125 F. 672, 60 C.C.A. 362.

Seamen who go on board a vessel, and enter upon the work as mariners voluntarily but without any valid contract may be required by the master to perform such services as are necessary to the navigation of the vessel while at sea, but they are not bound to continue with the vessel through the voyage, and may leave it at any port without forfeiting the wages earned, although they cannot in such case require the owner to return them to the port of shipment. *The Occidental*, D.C.Wash.1900, 101 F. 997.

Where seamen on a British ship did not sign articles before the British consul, but were taken aboard the vessel by a boarding-house master, who wrote their names in the shipping articles, after which they served aboard the ship, but did not complete the voyage described in the articles, the articles were not binding as to voyage or term or rate of wages, and the men could leave the vessel at any port without becoming deserters, and were entitled to recover on a quantum meruit for services performed. *Johnson v. The Karoo*, D.C.Wash.1892, 49 F. 651.

A seaman was hired without signing shipping articles on a vessel about to proceed on a voyage from a port in one state to a port in a state not adjoining, and he could leave the vessel at any place. *The Pacific*, D.C.Pa.1855, 23 F. 154.

Shipping articles signed after the vessel has left her port of departure are not binding upon the seaman, and he may leave the vessel at any time without incurring the penalties of desertion. *The Theodore Perry*, D.C.Mich.1878, 24 Int. Rev.Rec. 54, Fed.Cas.No.13,880.

A seaman on a lake vessel, having shipped under a verbal agreement, may leave the vessel at any time. *The City of Fremont*, D.C.Wis.1871, Fed.Cas.No. 2,746.

Seamen may leave the vessel at any time where the shipping articles do not describe the voyage, and an imprisonment by the master for refusing to remain and do duty is a tort. *Snow v. Wope*, C.C.Mass.1855, Fed.Cas.No.13,149.

Under this section and section 574 of this title, where a seaman's contract had not been signed by the master at the time he was induced by defendants to leave the vessel, the contract was void, and defendants could not be convicted for violating Rev.Laws Mass. c. 66, § 2, prohibiting the enticement of a member

of the crew to desert the vessel before the expiration of his term of service thereon. *Commonwealth v. Bartlett*, 1906, 76 N.E. 607, 190 Mass. 148.

A seaman who, having sailed under shipping articles which are void, has left the vessel without the consent of the master, at a port where another seaman might readily be procured to supply his place, may recover his wages to that time, although an entry has been made in the logbook that he has deserted. *Roberts v. Knights*, 1863, 89 Mass. 449, 7 Allen 449.

§ 579. Repealed. Aug. 7, 1946, c. 770, § 1(38), 60 Stat. 866

Historical Note

Section, R.S. § 207, provided for reports to Congress by the Secretary of State concerning returns of collectors.

WAGES OF SEAMEN

Decisions Relating to Wages Generally

Allowed, lien on vessel 8
 Amount of recovery 19, 20
 Deductions and offsets 20
 Assignment, lien on vessel 2
 Considerations governing, payment 10
 Costs 21
 Custody of vessel, services during, lien on vessel 3
 Deductions and offsets, amount of recovery 20
 Disallowed, lien on vessel 9
 Evidence and burden of proof 18
 Illness or injury, payment 11
 Lien on vessel 1-9
 Allowed 8
 Assignment 2
 Custody of vessel, services during 3
 Disallowed 9
 Master 4
 Owner or part owner 5
 Priority 6
 Vessels subject 7
 Master, lien on vessel 4
 Owner or part owner, lien on vessel 5
 Particular contracts and services, payment 14
 Payment 10-14
 Considerations governing 10
 Illness or injury 11
 Particular contracts and services 14
 Release 12
 Seizure of vessel, effect 13
 Persons
 Entitled to wages 15
 Liable 16
 Priority, lien on vessel 6
 Procedure 17

Release, payment 13
 Review 22
 Seizure of vessel, effect, payment 13
 Vessels subject, lien on vessel 7

1. Lien on vessel

Wages of seamen are primarily lien on vessel. *Butler v. Ellis*, C.C.A.N.C.1930, 45 F.2d 951.

Seamen's wages are a lien on the ship, and the ship is primarily liable therefor. *McCall v. U. S. Shipping Board Emergency Fleet Corporation*, D.C.Wash.1924, 294 F. 989.

The right to claim a maritime lien for wages is not restricted to mariners who serve the ship with peculiar nautical skill, but extends to all whose services are in furtherance of the main object of the enterprise in which the ship is engaged. *McRae v. Bowers Dredging Co.*, C.C.Wash.1898, 86 F. 344.

In maritime law, a contract may fix term and nature of seaman's service, and amount of compensation, and amount earned for services rendered pursuant thereto, by law, automatically becomes a lien, and vessel may be appropriated as security for payment of claim arising therefrom. *Gaynor v. The New Orleans*, D.C.Cal.1944, 54 F.Supp. 25.

Under agreement with ferryboat employees for dismissal benefits in con-

Note 1

temptation of loss of employment because of opening of bridges, that benefits might be other employment rather than cash payments did not destroy employees' maritime lien which is effective so long as compensation may be translated into money or its equivalent. *Id.*

Incidental condition of contract to work on shore does not deprive seamen of lien. *The Artisan*, D.C.N.Y.1877, Fed. Cas.No.568.

A sealer is to be considered a mariner, and so entitled to a lien upon the vessel for his wages. *The Ocean Spray*, D.C. Or.1876, 4 Sawy. 105, Fed.Cas.No.10,412.

A contract to work at a certain rate per month in port in putting in machinery will not give the person a lien for wages as a seaman. *Walter v. The Kamchatker*, D.C.N.Y.1841, Fed.Cas.No.17,119.

The seamen have a lien by the maritime law on the freight as well as the vessel for their wages, which is not taken away by the provisions of the law allowing process against the vessel; and where the charterers are owners for the voyage, the seamen have a lien on the cargo shipped on account of the charterers for a charge in the nature of freight. *Poland v. The Brig Spartan*, D.C.Me.1828, 1 Ware 134, 130, Fed.Cas.No. 11,246.

2. — Assignment

Assignment of liens by seamen on full payment of their wages by assignee was valid. *The President Arthur*, D.C.N.Y. 1923, 25 F.2d 999.

Lien for wages was assignable, in absence of fraud or overreaching. *Id.*

A lien for wages may be assigned if the seaman receives his wages in full and is not defrauded. *The Bethlehem*, D.C.Pa.1923, 286 F. 400.

3. — Custody of vessel, services during

Prima facie, the rendition of mariner's services imports a lien, and the mere fact that a vessel is navigated by a receiver appointed by a state court does not necessarily negative such lien although there may be facts in the particular case to show that credit was expressly given to the owner, to the charterer, or to some third person, in fact, the question of lien or no lien is not one of jurisdiction, but of merits. *The Resolute*, Or.1897, 18 S.Ct. 112, 168 U.S. 437, 42 L.Ed. 533.

Seamen were entitled to reasonable value of services rendered while vessel was

in custody of marshal. *Folkes v. Proceeds, Remnants and Surplus of the General Geo. W. Goethals*, D.C.N.Y.1928, 27 F.2d 183.

No maritime lien for wages arises while vessel is in custody of marshal. *Id.*

Crew of vessel have no maritime lien for wages earned after seizure on legal process. *The Fort Gaines*, D.C.Md.1927, 18 F.2d 413.

"Where a receiver in bankruptcy operates a vessel and employs a crew, no reason, on principle, suggests itself why the maritime law with respect to liens for wages should be suspended. No authorities to that effect have been brought to my attention, indeed, rather to the contrary is *The Resolute*, Or.1897, 18 S. Ct. 112, 168 U.S. 437, 42 L.Ed. 533." *The Washington*, D.C.N.Y.1924, 296 F. 158.

After attachment of the vessel there is no lien for wages subsequently accruing. *The Bethlehem*, D.C.Pa.1923, 286 F. 400.

Except for the extra month's wages authorized by statute there is no maritime lien in favor of the crew after the vessel was placed in the custody of the law. *The Astoria*, C.C.A.Canal Zone 1922, 281 F. 618.

Where schooner became disabled on a voyage, and while in a port awaiting repairs was libeled for salvage and other claims, and seized by the marshal, owners notified the master that the voyage, and in effect that the vessel, would be abandoned, which notice was read to the crew and the master having no funds, the crew filed a libel for wages, alleging their discharge, but remained on board until the vessel was sold, performing such duties as were required, their filing of the libel was an election to accept the action of the owners as terminating the voyage, and, as against other lien claimants, they were entitled to a lien for wages only to that time. *The Nissequogue*, D.C.N.C.1922, 280 F. 174.

Where possession of a vessel by a sheriff under an attachment suspends her employment and compels the abandonment of preparations for such employment, services of a seaman who remains on board are not of a maritime nature, and will not create a lien. *The Bethulia*, D.C.Mass.1912, 200 F. 876.

An engineer, remaining on a vessel after it had been taken out of her owner's control and while under a marshal's custody, has no lien for wages during that time. *The Philomena*, D.C.Mass.1912, 200 F. 873.

Captain of libeled vessel was not entitled to lien against vessel for unpaid wages accruing after vessel had been taken into custody. *Bromfield Mfg. Co. v. The Brown, Smith & Jones, D.C. Mass.1954, 117 F.Supp. 630.*

4. — Master

A captain of a vessel cannot have a lien upon her for his salary. *The Maret, C.C.A.Virgin Islands 1944, 145 F.2d 431.*

Master has lien on freight, though not on ship, for wages. *The Else, D.C.Ala. 1928, 27 F.2d 935.*

Master had no maritime lien for wages earned after seizure on legal process. *The Fort Gaines, D.C.Md.1928, 24 F.2d 438.*

There is no lien in admiralty for master's wages. *The Putnick, D.C.Wash. 1923, 291 F. 902.* See, also, *The Atlanta, D.C.Ga.1948, 82 F.Supp. 218.*

One employed to perform the ordinary duties of master of a barge, but who was not the enrolled master, is not a master in such sense as to defeat his right to a lien for his services. *The Chicago, D.C.N.Y.1916, 235 F. 538.*

The captain has no lien on the vessel for wages due him, but only a claim against the owner. *The Bethulia, D.C. Mass.1912, 200 F. 876.*

The master of a vessel has no lien on the vessel for his wages. *Woolsey v. The Amiga Mia, D.C.La.1950, 90 F.Supp. 228, affirmed 186 F.2d 920.*

Where only duties performed by libellant seeking recovery of wages were those of master, libellant was not entitled to a maritime lien or to be paid by preference out of proceeds from sale of vessel. *Id.*

Where the law of Panama, under the flag and registry of which nation steamship sailed, gave the master a lien for his unpaid wages, captain of the ship would be allowed a lien against fund realized from the sale of the ship, to the extent of his unpaid wages. *The Atlanta, D.C.Ga.1948, 82 F.Supp. 218.*

5. — Owner or part owner

A half owner of a vessel may not assert a lien against it for services, as master and mechanic, as against unpaid wages of seamen. *The Morning Star, D.C.Wash.1924, 1 F.2d 410.*

A seaman, who is also the record owner of a boat, although merely for the accommodation of the real owner, has no right to a lien for wages as against other lienholders. *The Samuel Little, D.C.*

N.Y.1913, 206 F. 686, affirmed 221 F. 308, 137 C.C.A. 136.

A part owner of a vessel who has given a purchase-money mortgage has a lien for wages enforceable in rem in admiralty where there are no innocent creditors or purchasers involved. *The M. M. Morrill, D.C.Wash.1897, 78 F. 509, affirmed 83 F. 215.*

The fact that a seaman is a part owner in a vessel will not deprive him of his lien for wages and the right to enforce the same by a process in rem in admiralty. *The Schooner Uncle Tom, D.C.N.Y. 1879, 10 Ben. 234, Fed.Cas.No.14,335.*

6. — Priority

A maritime lien for wages has priority over liens of other types of creditors. *Slavin v. Port Service Corporation, C.C.A.Pa.1943, 138 F.2d 386.*

In order to dispose of claim of a maritime lien for wages, court must determine not only the terms of employment but also whether vessel was withdrawn from navigation during period of employment and if so when such withdrawal occurred. *Id.*

Seaman, signing printed form of oath and insurance adjustment documents as master of vessel in order to enable it to operate in coastwise trade and owners thereof to recover damages sustained, was not estopped to deny that he was master. *Wandtke v. Anderson, C.C.A. Cal.1934, 74 F.2d 381.*

One serving as engineer, operator, and stevedore on motorboat, with two subordinate members of crew, but not controlling vessel's movements or employment, signing bills of lading, or collecting freight money, was not "master," but "seaman," entitled to priority of claim for wages. *Id.*

Seamen were entitled to first lien on part of cargo proceeds representing unpaid freight, lien being for wages. *Clifford v. Merritt-Chapman & Scott Corporation, C.C.A.Fla.1932, 57 F.2d 1021.*

Charter provision that charterer was unauthorized to incur liens did not affect seamen's right to wages, accorded superiority in admiralty. *The Chester, D.C. Md.1928, 25 F.2d 908.*

In libel against steamtug, seaman's wages and proctor's fee were, in distribution of proceeds, entitled to priority over coal-supplying claimant's proctors' fee. *The John Gully, D.C.N.Y.1927, 20 F. 2d 211.*

Seaman's lien for wages and extra pay takes precedence over other claims. *The Fort Gaines, D.C.Md.1927, 18 F.2d 413.*

Note 6

Failure to record bill of sale of vessel under R.S. § 4192, repealed, might be considered in determining equities between purchaser and seamen filing libel in rem for wages after sale. *The Lakeport*, D.C.N.Y.1926, 15 F.2d 575.

A canteenman on a vessel, whose equipment and belongings were lost when the vessel was libeled and sold, has a maritime lien for the loss, on an equal basis with a wage lien and prior to any liens for supplies furnished. *The Washington*, D.C.N.Y.1924, 296 F. 153.

The lien given a seaman on a ship for his wages is not subject to the lien of a cargo owner for damage done to the cargo alleged to have been caused by unseaworthiness and negligence in loading, stowage, care, etc., as seamen are not responsible for the seaworthiness of the ship nor for the loading, stowage, etc., of the cargo. *The Owego*, D.C.Wash.1923, 292 F. 505.

"A salvage service, which protects the res, and without which service the security of the seamen might be lost, outranks prior seamen's wages." *The Nika*, D.C.Wash.1923, 287 F. 717.

Claims of seamen against a vessel for wages due have priority over the claims of other creditors. *Gerber v. Spencer*, C.C.A.Cal.1922, 278 F. 886.

Seaman's claim for wages is favored by the law and generally preferred to other liens; and claim against vessel for wages will not be denied on sole ground that inferior claim accrued within 40 days preceding the filing of the libel. *The Samuel Little*, N.Y.1915, 221 F. 308, 137 C.C.A. 136.

The rule that maritime liens entitled to precedence in case of harbor tugs, making no regular voyages, will be limited to such as arose within 40 days does not apply to claims for wages which may be given priority for a reasonable time; and Act June 23, 1910, c. 373, 36 Stat. 604, made no change in the preference rule. *The Towanda*, D.C.N.Y.1914, 215 F. 232.

Where a state court acquires common-law jurisdiction of a case in which a vessel is seized by foreign attachment before it is libeled in admiralty for seamen's wages, the lien of the attachment creditors is superior to that of the seamen. *Carryl v. Taylor*, Pa.1854, 2 Am. Law Reg. 333.

7. — Vessels subject

A floating dredge is a "vessel" subject to lien for seaman's wages. *Butler v. Ellis*, C.C.A.N.C.1930, 45 F.2d 951.

Seamen have no lien for wages against privately owned vessel, owned and operated by foreign government when liability was incurred. *The Nevada*, C.C.A.Cal.1926, 11 F.2d 511, certiorari denied 47 S.Ct. 94, 273 U.S. 700, 71 L.Ed. 847.

A derrick hoist was a vessel subject to admiralty jurisdiction and against which the engineer and general utility man employed thereon were entitled to a seaman's lien for wages. *The Sallie*, D.C.Pa.1909, 167 F. 880.

A barge without sails or rudder, used for transporting brick, on which men are employed in loading, carrying, and delivering brick, is subject to a lien for wages of the men employed in such transportation as seamen. *Disbrow v. The Walsh Brothers*, D.C.N.Y.1888, 36 F. 607.

A mariner has a lien for wages on a sail vessel engaged in transportation on the tide waters of the Hudson river within the territory of the state. *The Bolivar*, D.C.N.Y.1847, Fed.Cas.No.1,610. See, also, *Pierce v. The Victory*, D.C.N.Y. 1844, Fed.Cas.No.11,149a.

A maritime lien arises for services as a mariner on board a vessel having no propelling power, and towed between Philadelphia and New York upon tide waters. *The D. C. Salisbury*, D.C.N.Y. 1844, Fed.Cas.No.3,694.

8. — Allowed

Where one originally employed as an engineer was employed as a watchman after vessel was withdrawn from navigation, he would be entitled to a maritime lien for wages only for the period during which he was employed as an engineer and not while employed as a watchman. *Slavin v. Port Service Corporation*, C.C.A.Pa.1943, 138 F.2d 386.

One employed as an engineer is entitled to a seamen's lien upon vessel or its proceeds for wages during entire period of employment if he was ready and willing to perform the duties for which he was engaged, though services were not actually rendered because of idleness of the vessel. *Id.*

Record showed reasonable probability of unpaid earned freight upon which seamen might have indirect wage liens; hence case should be reopened to ascertain part of cargo proceeds representing freight to permit enforcement of liens. *Clifford v. Merritt-Chapman & Scott Corporation*, C.C.A.Fla.1932, 57 F.2d 1021.

Seamen's error in contending for lien on entire cargo, not merely on earned freight, did not debar them from proving

true right discovered before final decree. *Id.*

Engineer's services, moving vessel under construction to another port, were lienable. *The Minnie V.*, D.C.Mass.1927, 24 F.2d 604.

Orchestra owner was entitled to lien for services on excursion boat, operated in and about waters of Puget Sound and Lake Washington in view of section 713 of this title, declaring every one employed on a vessel a "seaman." *The Sea Lark*, D.C.Wash.1926, 14 F.2d 201.

A marine fireman is entitled to a maritime lien for services. *The Jack-O-Lantern*, D.C.Mass.1922, 282 F. 899.

A libellant, employed to navigate a barge during a period of 7 or 8 years, was entitled to a lien for the balance of wages due him at the end of that time. *The Chicago*, D.C.N.Y.1916, 235 F. 538.

An engineer on a motor boat engaged in fishing was entitled to a maritime lien as a seaman for his wages. *The Virginia Belle*, D.C.Va.1913, 204 F. 692.

One employed on a steamer as bartender, when such service is in furtherance of the purpose of her voyage, is entitled to a maritime lien for his wages. *The J. S. Warden*, D.C.N.Y.1910, 175 F. 314.

Persons employed upon a flat boat, having on her a pile driver, and who assist in moving her about, and who also work the pile driver and are engaged in constructing a bulkhead for channel lights, are to be regarded as rendering maritime services, so as to give them a lien on the vessel for their wages. *Southern Log Cart & Supply Co. v. Lawrence*, Ala.1898, 86 F. 907, 30 C.C.A. 480.

One who brings a vessel into her home port, and lays her up there,—i. e. anchors her out of the channel, pumps her out, dries her sails, sees to her fastenings, and renders other services usually performed by mariners,—is entitled to a lien for his compensation. *Pond v. The Hattie Thomas*, D.C.Conn.1894, 59 F. 297.

Persons employed to load and navigate a vessel plying principally for the transportation of stone, and licensed for the coasting trade, have a lien for wages. *The Mary*, D.C.Mass.1852, Fed.Cas.No.9-190. See, also, *Packard v. The Louisa*, C.C.Mass.1846, Fed.Cas.No.10,652; *The Canton*, D.C.Mass.1858, Fed.Cas.No.2,383.

Seamen engaged to serve on a ship for a voyage have a lien for wages while she is getting ready, though she never

left the port. *Levering v. The Bank of Columbia*, C.C.Dist.Col.1803, Fed.Cas.No. 8,286. See, also, *The Island City*, D.C.Mass.1889, Fed.Cas.No.7,109; *The Blohm*, D.C.N.Y.1867, Fed.Cas.No.1,556.

9. — Disallowed

One asserting a lien against a vessel for services as pilot is not entitled to a lien for a period when the vessel was laid up, and he acted only as watchman or shipkeeper. *The Morning Star*, D.C.Wash.1924, 1 F.2d 410.

A 16 year old son of the captain of a schooner, employed thereon, is not entitled to a lien on the vessel for seamen's wages. *The John T. Williams*, D.C.Conn.1901, 107 F. 750.

Claims for wages by seamen who were on a vessel at the time of her seizure, under Code Va. § 2186, for violating the state oyster law, and who were presumably participating in the violation of law, must be disallowed as against a purchaser under the forfeiture proceedings. *Hastings v. The Elexena*, D.C.Va. 1892, 53 F. 359.

Where a father agreed to run a vessel on shares, and to pay all the expenses of running her, and his minor son, being a member of his household and living on board as a member of the father's family, acted as mate, no lien against the vessel could, under such circumstances, be acquired by either the father or son. *The Hattie Low*, D.C.N.Y. 1882, 14 F. 880.

The services of a watchman and ship keeper, rendered while the vessel is in port, do not create a maritime lien. *The E. A. Barnard*, C.C.Pa.1880, 2 F. 712.

No maritime lien can be allowed for wages to seamen accruing after libeling of ship. *Bromfield Mfg. Co. v. The Brown, Smith & Jones*, D.C.Mass.1954, 117 F.Supp. 630.

Wages of a seaman on board a vessel in port, who was hired to take care of her while in port, are not a lien. *Levering v. Bank of Columbia*, C.C.Dist.Col. 1804, Fed.Cas.No.8,287.

Where the prosecution of the voyage is abandoned, and a seaman remains on board to take care of the ship, his wages which accrue after such abandonment are not a lien on the ship. *Levering v. The Bank of Columbia*, C.C.Dist.Col.1803, Fed.Cas.No.8,286.

10. Payment—Considerations governing
New agreement to pay increased compensation for services under contract,

Note 10

made under circumstances amounting to coercion, was without consideration. The *Z R-3*, D.C.Wash.1927, 18 F.2d 122.

That a seaman may recover wages it must appear, not only that there was a valid contract of employment, but that he performed his contract until the voyage was completed, or his term of service expired, or some legal and sufficient excuse must be shown for nonperformance. *The City of Norwich*, C.C.A.N.Y.1922, 279 F. 687.

An injured seaman is entitled to receive his wages, to the end of his voyage. *La Fontaine v. The G. M. McAlister*, D.C.N.Y.1951, 101 F.Supp. 826.

A seaman, voluntarily quitting his service on ship, is not entitled to further unearned wages. *Wahler v. Alaska S. S. Co.*, D.C.Wash.1950, 91 F.Supp. 261.

Payments to a seaman are properly applied to the earliest wages earned, though under a prior master. *Smith v. Oakes*, 1886, 5 N.E. 824, 141 Mass. 451, 55 Am. Rep. 487.

11. — Illness or injury

Where seaman employed on vessel engaged in fishing for tuna and sardines on a $\frac{1}{4}$ lay or share of whatever fish were taken was injured on second day of employment while taking a net from warehouse to vessel, the seaman is entitled to wages, maintenance, and cure. *The Betsy Ross*, C.C.A.Cal.1944, 145 F.2d 688.

Seaman was entitled to wages while ill in hospital, where voyage had not ended when he left hospital. *The Juneau*, D.C.La.1926, 11 F.2d 430.

Ship should not be held liable for difference in pay of mate, demoted when injured, where allowance was made to him for injuries. *The Rosemary*, D.C.Va.1925, 9 F.2d 980, affirmed 9 F.2d 982.

Where a seaman during a voyage to a particular port was incapacitated by illness in the service without fault on his part, his right to wages was not limited to a termination of the voyage in the course of which the incapacity arose, but he was entitled to recover wages to the end of his contract, in addition to maintenance and cure up to that time. *Enechasson v. Freeport Sulphur Co.*, D.C.Tex. 1925, 7 F.2d 674.

Where a seaman was injured while working on a ship at port wages, before he had signed articles to accompany the ship on her next voyage, although he intended to do so, and before the wages had been agreed on, he cannot recover

his wages for the period of the voyage subsequently made by the ship. *The Cliftwood*, D.C.Ala.1922, 280 F. 726.

A seaman, having fallen sick on a voyage, is entitled to recover his full wages for the trip for which he was engaged and the necessary expenses incurred in his cure, though he went to a hospital on reaching a port before end of voyage. *Pacific Mail S. S. Co. v. Lucas*, C.C.A.Cal.1920, 264 F. 938, affirmed 42 S.Ct. 308, 258 U.S. 266, 66 L.Ed. 614.

Generally, seaman is entitled to wages for whole period of voyage in accordance with shipping articles although he is unable to work during part of voyage because of injury or illness. *Ward v. American President Lines*, D.C.Cal.1951, 95 F.Supp. 609.

Where seaman was discharged from marine hospital as fit for duty and entertained belief that he was in good health, and his belief was fairly substantiated by physical examination which was given by ship's doctor and disclosed no disability, and thereafter, during voyage, seaman was hospitalized suffering from active tuberculosis, seaman was entitled to wages for whole period of voyage notwithstanding prior history of disease. *Id.*

A seaman receiving maintenance and care for a period of convalescence following his discharge from vessel after appendectomy was entitled to wages for same period, notwithstanding that shipping articles provided for twelve months' voyage, and that shipping articles were closed out prior to termination of period of convalescence. *Ziegler v. Marine Transport Lines*, D.C.Pa.1947, 78 F.Supp. 216.

Where seaman, who had been taken ill during course of voyage, was returned on February 25, 1945, to port from which he had originally sailed in good health and able to work and at the time the country was at war and seamen were in demand, seaman could have secured suitable employment, and, having failed to do so, was not entitled to wages and maintenance beyond that date. *Warren v. U. S.*, D.C.Mass.1948, 75 F.Supp. 834.

The obligation of owner or operator of a vessel to pay wages to a seaman who falls ill during course of voyage lasts until end of voyage or until time when seaman is not only well, but able to find suitable employment, whichever is the shorter period. *Id.*

A seaman, was injured while in "service of the ship," so as to be entitled to wages, though ashore at Mediterranean

port with permission at time of injury. *Dasher v. U. S.*, D.C.N.Y.1945, 59 F.Supp. 742.

12. — Release

Where there was no shadow of overreaching in procuring release of seaman's claim for wages, doctrine requiring court to jealously scrutinize any release executed by a seaman would not be applied to invalidate the release, since to set aside the release would in effect deny to seamen the freedom to settle their controversies upon their own terms. *Johnson v. Andrus*, C.C.A.Conn.1941, 119 F.2d 287.

Where a seaman became sick without his fault during a voyage, and was placed in a hospital at a certain port, and on his discharge from the hospital in a penniless condition was required to sign a statement that he accepted his wages, which had been left with the United States consul, as payment in full for the voyage in order to obtain such wages, he was entitled to recover full wages for the remainder of the voyage, after deduction of the amount earned in other employment during the time of the voyage, since his status was not that of a discharged seaman, though he signed a receipt in full and he did not waive his claim under the shipping articles by accepting such other employment. *Halvorsen v. U. S.*, D.C.Wash.1922, 284 F. 285.

A member of steamship's crew was not entitled to recover from ship owner wages claimed for remainder of ship's voyage after he voluntarily terminated his employment contract, received all his accrued wages, signed off vessel, and signed mutual release with master thereof. *Wahler v. Alaska S. S. Co.*, D.C. Wash.1950, 91 F.Supp. 261.

Where chief mate who had refused to obey master's lawful commands was paid his wages when vessel reached shore and signed a release, War Shipping Administration, the operator of vessel was not liable to mate for unpaid wages. *Maes v. Los Angeles Tanker Operators*, D.C.Tex. 1948, 75 F.Supp. 7.

In admiralty suit by fisherman member of vessel's crew injured on navigable waters against vessel and owner thereof for libellant's share of season's fish catch and cost of maintenance and cure, federal District Court's decision as to validity of libellant's release of defendants from further liability on owner's payment of less than sum due must be governed by applicable decisions of federal courts to exclusion of contrary state court deci-

sions. *The Montague*, D.C.Wash.1943, 53 F.Supp. 548.

The burden is on one setting up seaman's release of vessel and owner from liability for wages and cost of maintenance and cure to show that release was executed freely without deception or coercion and made by seaman with full understanding of his rights. *Id.*

13. — Seizure of vessel, effect

Wages of seamen are not recoverable for services after seizure of the vessel by a marshal. *The Irages*, D.C.Fla.1922, 283 F. 445.

The engineer of a neutral vessel, seized as prize by a belligerent, is not entitled to wages while held as a witness by the foreign government. *Swanson v. Linga*, D.C.Cal.1916, 238 F. 253.

The filing of a libel for wages is an election to treat the contract as at an end, and the seamen are not entitled to wages while the vessel is in the marshal's custody under their claim and during which time they render no services. *The Chas. L. Baylis*, D.C.N.Y.1885, 25 F. 862.

Where engineer was to be paid \$250 per month, of which \$100 was to be paid monthly and balance was to be paid on refinancing, placing in operation, selling, or other disposition of either or both vessels, upon sale of one vessel the employer became obligated to pay the engineer balance of wages. *De Groat v. Trailerships, Inc.*, D.C.Pa.1943, 48 F.Supp. 857.

14. — Particular contracts and services

In admiralty proceeding for recovery of wages due libellant and his assignors on a fishing venture, under terms of the contract there could be no quasi contractual recovery for periods of idleness. *Mosher v. Tate*, C.A.Or.1950, 182 F.2d 475.

Where ship's articles, for war security reasons, described voyage only as to such places as might be ordered and back, for a term not exceeding 12 months, the 12 months' period was merely a limitation on duration of voyage and was not a stated period of employment, and hence injured seaman was not entitled to wages for 12 months but only to wages until actual end of voyage for which he signed. *Shields v. U. S.*, C.A.Pa.1949, 175 F.2d 743, certiorari denied 70 S.Ct. 249, 338 U.S. 899, 94 L.Ed. 553.

Where seaman, who shipped as steward's helper, actually served as able seaman, and on discharge was given letter

Note 14

by first officer to shipping commissioner stating that he had been so employed and had performed his duties satisfactorily, letter only amounted to recommendation of plaintiff as seaman, and was not construable as acknowledgment in writing of liability for able seaman's pay. *Buckley v. Oceanic S. S. Co.*, C.C. A.Cal.1925, 5 F.2d 545.

Libelants, who signed for a trip for a cargo of sand, but remained with the vessel while she was frozen in, on the evidence, stayed under an agreement with the master that they should be paid, and were entitled to recover on a quantum meruit. *The Helen Fairlamb*, D.C.Pa.1918, 251 F. 412.

Where libelants were engaged by assistant engineer, who was apparently authorized, for a voyage from San Francisco to New Zealand and return, they were entitled to wages for return voyage, despite signing of articles not providing for return, and execution of release in New Zealand to obtain wages. *The Moana*, D.C.Cal.1916, 236 F. 809.

A seaman is justified in staying by the vessel after a fraudulent deviation by the master and a conversion of the cargo to his own use, until such seaman arrives at the port of discharge, and can collect his wages for the entire period. *The Gen. McPherson*, D.C.Wash.1900, 100 F. 860.

Seamen whose terms of service end at the same hour of the day at which they commenced work are not entitled to payment of wages both for the day on which they commenced and that on which they completed their service. *The Carrier Dove*, D.C.Wash.1899, 98 F. 313.

In master's action in admiralty for wages, subsistence and vacation bonus allegedly due by reason of wrongful discharge, burden was on master, in absence of express offer of employment, to show that inference of such an offer in letter of assignment directing him to prepare and take vessel to another country was clear and unequivocal and that facts and circumstances excluded all reasonable doubt, and master was required to prove by preponderance of evidence that letter was such an offer. *Higbee v. American Foreign S. S. Corp.*, D.C.Pa. 1951, 94 F.Supp. 921.

Where vessel master, hired at will, received letter of instructions informing him of next voyage, cargo, destination, and agents to contact and giving him other general instructions, and letter ordered master to take vessel to another country but contained no mention of tenure of employment, letter was routine

assignment, and not an offer of contract for duration of voyage. *Id.*

Where a seaman, due to his own fault, failed to leave with his ship when it left port, he was properly classified as a "work-away" on another ship to which he had been assigned to serve until rejoining his own ship, and he was not entitled to be paid for the period of such absence. *Colon v. U. S.*, D.C.N.Y. 1947, 74 F.Supp. 216.

The requisition of vessel by War Shipping Administrator of the United States constituted a "sale" or "other disposition" of vessel, within contract entitling engineer to \$250 per month of which amount \$100 was to be paid monthly and balance upon refinancing, placing in operation, sale, or other disposition of vessel, so that on requisitioning of the vessel the engineer was entitled to balance of wages. *De Groat v. Trailerships, Inc.*, D.C.Pa.1943, 48 F.Supp. 857.

15. Persons entitled to wages

Where sailors were subjected to abuse, and one was assaulted by mate, by captain's orders, and he and another were ordered from the ship in a foreign port, whereupon they and others left to consult the vice consul of their country, and the vessel sailed without any signal or notification, wages were recoverable. *The Sinaloa*, D.C.Cal.1923, 292 F. 640.

The wife of the cook on a steam barge, who has been engaged by the master of the barge as second cook, is a mariner, and is entitled in a suit in rem to recover wages for her term of services. *Lawson v. The James H. Shrigley*, D.C.N.Y. 1892, 50 F. 287.

Where interveners are mere landsmen, who procure cargoes for a vessel and assist in loading them, they do not perform a maritime service, and are not entitled to recover upon a libel for seamen's wages. *The Ole Oleson*, C.C.Wis. 1884, 20 F. 384.

Employees on ferryboats in San Francisco Bay had a maritime lien upon a ferryboat under agreement for dismissal benefits entered into with ferry company in 1936, in contemplation of loss of employment due to opening of bridges for trans-bay traffic, since dismissal benefits were part of employee's "wages". *Gayner v. The New Orleans*, D.C. Cal.1944, 54 F.Supp. 25.

A fisherman member of crew of vessel engaged in commercial fishing in navigable waters is a "seaman," entitled to recover his wages or share of fish catch for duration of his employment contract

and reasonable cost of his maintenance and cure after becoming sick or being injured in service of vessel by suit in admiralty court against vessel and her owner. *The Montague*, D.C.Wash.1943, 53 F.Supp. 548.

The son of a partner in an adventure of discovery, who went out on the voyage as a passenger, but did full duty as a seaman on the return voyage, held not entitled to wages, though his name appeared on the shipping articles. *The Robert Noble*, D.C.Mass.1866, Fed.Cas.No. 11,894.

Where a minor concealed himself on board a whaling vessel until she was at sea, but might have been left at an intermediate port with the American consul there, the father was entitled to his wages from the time of leaving that port. *Luscom v. Osgood*, D.C.Mass.1844, Fed. Cas.No.8,608.

An agreement for a share in the proceeds of a whaling voyage does not create a partnership in profits of the voyage, but is in the nature of a seaman's wages. *Reed v. Canfield*, C.C.Mass.1832, Fed.Cas.No.11,641. See, also, *Reed v. Hussey*, D.C.N.Y.1836, Fed.Cas.No.11,646; *The Crusader*, D.C.Me.1837, Fed.Cas.No. 3,456; *Coffin v. Jenkins*, C.C.Mass.1844, Fed.Cas.No.2,948.

16. Persons Liable

The master is liable for the wages of mariners, if he admit them to serve on board the vessel, although they were originally shipped by the owner. *Farral v. McClea*, 1788, 1 U.S. 392, 1 Dall. 392, 1 L.Ed. 191.

The obligation to pay wages of seamen signing shipping articles, stating that master, officers, and all members of crew of vessel were employees of United States, not of steamship company appointed by War Shipping Administration as general agent for vessel, and specifically referring to such company as general agent for Administration, arose out of employment contract between seamen and master representing ship and its owners, as did obligation to provide maintenance and cure for injured seaman, so that he could not assert claim for wages or maintenance and cure against steamship company. *Gaynor v. Agwilines, Inc.*, C.A.Pa.1948, 169 F.2d 612, affirmed 69 S.Ct. 1330, 337 U.S. 810, 93 L.Ed. 1709.

Seaman's claim for wages against operating agent of vessel owned by the United States was properly dismissed because arising out of a contract of employment by the United States as a dis-

closed principal. *Shilman v. U. S.*, C.C. A.N.Y.1947, 164 F.2d 649, certiorari denied 68 S.Ct. 608, 333 U.S. 837, 92 L.Ed. 1122.

Where one master turned over all of the ship's funds to his successor, his liability for future wages of seamen ceased. *McCall v. U. S. Shipping Board Emergency Fleet Corporation*, D.C.Wash.1924, 294 F. 989.

Where seaman, after being hired, reported to mate and left his clothing and personal effects on vessel, which sailed without him because he overstayed his shore leave, and property could not be found when notice of loss reached vessel several months later, owner of vessel, unable to explain loss, was liable. *Moser v. Standard Oil Co. of New Jersey*, D.C.Pa.1944, 60 F.Supp. 6.

A private owner of a vessel was liable, for loss of seaman's clothing, though owner was operating vessel as agent of War Shipping Administration. *Id.*

Where the general owner places the ship in the exclusive possession and control of another, such other becomes the owner pro hac vice with respect to liability for wages and other expenses, and recovery therefor cannot be had against general owner. *Everett v. U. S.*, C.C.A. Wash.1922, 284 F. 203, certiorari denied 43 S.Ct. 361, 261 U.S. 615, 67 L.Ed. 828.

The general owner is liable for seamen's wages only when privity with the master is shown. *Id.*

The master is personally responsible for wages of a seaman earned while under his command, though the seaman was employed by a former master. *Smith v. Oakes*, 1886, 5 N.E. 824, 141 Mass. 451, 55 Am.Rep. 487.

The master is personally liable for the wages of seamen shipped by him, which accrued while he was in command. *Temple v. Turner*, 1877, 123 Mass. 125.

17. Procedure

That wages of prior voyages were not specifically claimed in libels originally filed is not sufficient ground for denying relief where the matter was fully considered by the court, and an amendment of pleading should have been allowed if deemed necessary, since seamen are wards of the admiralty and are not to be denied on technical grounds of pleading, relief to which they are entitled. *Korthinos v. The Niarchos*, C.A. Va.1949, 175 F.2d 730, rehearing denied 175 F.2d 734, certiorari denied 70 S.Ct. 241, 338 U.S. 894, 94 L.Ed. 550, rehearing

Note 17

denied 70 S.Ct. 345, 338 U.S. 934, 94 L. Ed. 579.

Seamen's omission to file libel until after sale of vessel did not constitute laches, in view of owner's promise of full payment on sale of steamer. The Lakeport, D.C.N.Y.1928, 15 F.2d 575.

Seamen under the shipping articles have a threefold remedy for their wages against (1) the ship, (2) the owner, and (3) the master. *Everett v. U. S.*, D.C. Wash.1921, 277 F. 256, affirmed 284 F. 203.

In admiralty a wage claim is of the highest rank and should not be summarily dismissed for mere delay unless requirements to that end are plain and compelling. *Myers v. U. S.*, D.C.N.Y.1949, 81 F.Supp. 747.

Persons not strictly mariners may charge a vessel or owners in admiralty for services on shipboard which were necessary to her navigation or safety. *Sunday v. Gordon*, D.C.N.Y.1837, Fed. Cas.No.13,616.

A hand on board a sloop of over 50 tons plying on the Hudson river, between New York and Catskill, is a seaman, and entitled to sue in personam in admiralty for wages. *Martin v. Acker*, D.C.N.Y.1831, Fed.Cas.No.9,155.

18. Evidence and burden of proof

The burden of proving desertion as a defense to a claim for wages always rests on the owner of the ship. *Gerber v. Spencer*, C.C.A.Cal.1922, 278 F. 886.

On a libel by seamen for reasonable compensation for extra work while the crew was short, evidence was insufficient to show that the seamen who filed the libel were compelled to do extra work. *The Silver Shell*, D.C.N.Y.1917, 255 F. 340.

A seaman who hires for a trading voyage for a specified time cannot sue for wages until the expiration of the time unless there be proof of his actual or constructive release. *The Warrington*, D.C.N.Y.1832, 1 Blatchf. & H.Adm. 335, Fed.Cas.No.17,208.

19. Amount of recovery

Injured seaman was not entitled to bonus based on transit of areas of risk, where seaman because of his misfortune did not sail on the vessel and thus did not traverse any areas of risk. *Shields v. U. S.*, C.A.Pa.1949, 175 F.2d 743, certiorari denied 70 S.Ct. 249, 338 U.S. 899, 94 L.Ed. 553.

Seamen, rendering services on ship while in custody of marshal, were enti-

tled to \$30 a month compensation. *Folkes v. Proceeds, Remnants and Surplus of the General Geo. W. Goethals*, D.C.N.Y.1928, 27 F.2d 183.

Seamen not having been discharged, but having left voluntarily because of breach by ship or master of contract limiting hours of work, are entitled to wages at contract rate for time served, to compensation for work they were required to do in addition to what they contracted to do, and to damages for breach. *The Mount Everest*, C.C.A.La. 1927, 17 F.2d 478.

One employed as first assistant engineer on steamship at salary of "\$216 per month, subject to increase in wages as promotion offers," who on being promoted to chief engineer received \$305 per month on one voyage and lesser amounts thereafter on other voyages, was not entitled, on termination of employment, to recover difference between amounts actually received as chief engineer on later voyages and \$305 per month from date of his first promotion. *McDonough v. Pacific Mail S. S. Co.*, C.C.A.Cal.1925, 5 F.2d 958.

The action of the court in computing the daily wage of the seamen as one-thirtieth of their monthly wage was proper. *Gerber v. Spencer*, C.C.A.Cal. 1922, 278 F. 886.

Where sailors were inveigled aboard a ship and compelled to serve against their will, the master could not fix the rate of their wages, but the court would fix it anywhere within reasonable limits; and where there was evidence that \$30 per month was the highest rate at their port of shipment at the time of shipment, and also that their fare aboard ship was bad, they should recover at the rate of \$30 per month. *Johnson v. The Karoo*, D.C. Wash.1892, 49 F. 651.

\$7,392.44 paid third mate for 13 months and 19 days, straight time and overtime, constituted fair and adequate compensation. *Young v. U. S.*, D.C.Tex.1948, 78 F.Supp. 954.

Seaman who was entitled to recover maintenance and wages was entitled to six percent simple interest from end of voyage. *Warren v. U. S.*, D.C.Mass.1948, 75 F.Supp. 836.

Where seaman, on December 30, left vessel in England because of illness and, at government expense, was hospitalized and thereafter on February 25, was returned to the United States well and able to work, seaman was entitled to wages for one day in December, for all of January and for 25 days in February, and

was entitled to maintenance for such period except the time spent in hospital and on board vessel returning home. *Id.*

Where employees worked both in intrastate and interstate commerce, in absence of testimony as to how often they helped in interstate work and how long or to what extent they helped, employees could not recover for overtime and double compensation for interstate work. *Schwarz, for Use and Benefit of Kotek, v. Witwer Grocer Co., D.C.Iowa 1943, 49 F.Supp. 1003.*

In a suit for wages, interest is allowed from the time of a demand proved; and if no such demand is proved, from the commencement of the suit. *Gammel v. Skinner, C.C.Mass.1814, 2 Gall. 45, Fed.Cas.No.5,210.*

20. Deductions and offsets

Where court found that seaman, who had been disabled, was entitled to wages to end of voyage, total allowance was required to be reduced by the applicable withholding and social security tax deductions. *U. S. v. Johnson, C.C.A.Cal. 1947, 160 F.2d 789, affirmed in part and reversed in part on other grounds 68 S. Ct. 391, 333 U.S. 46, 92 L.Ed. 468, motion denied 68 S.Ct. 788, 333 U.S. 865, 92 L. Ed. 1143.*

Sections 591 et seq. of this title, relating to seamen's wages, contemplate payment to seamen by employer, at termination of employment, of all his earned wages, without any deductions except those which are expressly authorized, and do not authorize the withholding of wages in anticipation of a court-martial fine subsequently imposed. *Shilman v. U. S., C.C.A.N.Y.1947, 164 F.2d 649, certiorari denied 68 S.Ct. 608, 333 U.S. 837, 92 L.Ed. 1122.*

Special army court-martial fine against seaman on merchant vessel of the United States for violation of article of war could not be set off against seaman's claim for wages. *Id.*

Where a foreign seaman, after signing up, but before leaving port, contracted a loathsome disease, and on arrival at a port of the United States was detained for treatment in hospital at expense of the ship, under former section 169 of Title 8, Aliens and Nationality and regulations thereunder, the ship was entitled to deduct from his wages the amount so paid for his treatment. *The Alector, D.C.Va.1920, 263 F. 1007.*

The valid claim of a seaman for wages may not be defeated by offsetting against it the loss of certain silverware intrusted to him as chief steward when he shipped and not accounted for by him at the end of the trip. Such an allowance of set-off would make the steward under an ordinary contract of employment an insurer of all articles intrusted to him. *Schmidt v. Pacific Mail Steamship Co., D.C.Cal.1913, 209 F. 264, affirmed 214 F. 513, reversed on other grounds 36 S. Ct. 581, 241 U.S. 245, 60 L.Ed. 982.*

A valid claim of a seaman for wages may not be defeated by offsetting against it a debt of the seaman assigned to the master of the vessel personally. *The Journeyman, D.C.N.Y.1894, 60 F. 295.*

The liability of a seaman who was mortgagor of a vessel when a prior owner, for a deficiency on the mortgage, cannot be set-off against his claim for wages. *The Schooner Uncle Tom, D.C. N.Y.1879, 10 Ben. 234, Fed.Cas.No.14,335.*

21. Costs

Where libellant was left in an intermediate port because incarcerated for drunkenness during shore leave, and on his return to the home port, without calling on the captain for his wages, he sued in forma pauperis and then demanded his wages of the captain, libellant should not be permitted to recover costs though the ship's defense of desertion failed. *The Charles K. Schull, D.C.Pa.1909, 166 F. 374.*

Where wrongfully discharged seaman brought action for wrongful discharge against general agents of the ship, but action was dismissed on the ground that general agents were not proper parties, the costs in that case belonged to general agents, and steamship operators could not receive credit for costs in a judgment awarding seaman damages against operators for the wrongful discharge. *Aird v. U. S., D.C.Pa.1953, 116 F.Supp. 281, affirmed 216 F.2d 149.*

22. Review

In seamen's libel for wages, maintenance, and return expenses, consul's decision of dispute as to rights under shipping articles should not be disturbed, in absence of showing that it is contrary to law. *Uriarte v. U. S., D.C.N.Y.1926, 14 F.2d 164.*

§ 591. Commencement of wages

A seaman's right to wages and provisions shall be taken to commence either at the time at which he commences work, or at the time specified in the agreement for his commencement of work or presence on board, whichever first happens. R.S. § 4524.

Historical Note

Derivation. Act June 7, 1872, c. 322, § 30, 17 Stat. 268.

Repeal of Prior Laws. R.S. § 4534, providing for the disposal of extra wages obtained for seamen upon their discharge, was repealed by Act June 26, 1884, c. 121, § 8, 23 Stat. 55.

R.S. §§ 4585-4587 provided for the collection, from the masters or owners of vessels, of the sum of 40 cents per month for each seaman employed thereon, to be

retained out of the wages of such seamen. The moneys so collected were to be placed to the credit of "the fund for the relief of sick and disabled seamen" in the Treasury, and that fund was appropriated for the expenses of the Marine Hospital Service, and was to be employed for the care and relief of sick and disabled seamen, by R.S. § 4803. These three sections were repealed by the Shipping Act June 26, 1884, c. 121, § 15, 23 Stat. 57.

Cross References

Application of section to sail or steam vessels engaged in coastwise trade, see section 544 of this title.

Notes of Decisions

Bonus payments 1
Shipping articles, provisions in 2
Time, determination of 3

1. Bonus payments

A seaman injured by bomb while aboard American ship carrying war materials for British forces at time of German air raid on Port Suez should be paid wages until the end of the voyage plus bonus paid for such period of time that he was necessarily required to be in bonus areas. *Lewis v. American-Hawaiian S. S. Co.*, D.C.N.Y.1943, 49 F.Supp. 127.

2. Shipping articles, provisions in

A provision, in shipping articles signed by seamen for a voyage on a vessel then detained in port by ice, which usually went out within a very few days, that "the crew shall make no claim for wages or provisions while the vessel is detained by ice prior to departure," is not in violation of the statutes made for the protection of seamen, but is reasonable, and binding upon the crew where they had full knowledge of it before signing. *The Joseph B. Thomas*, Pa. 1906, 148 F. 762, 78 C.C.A. 423.

A stipulation in a contract for seamen's services that "the crew shall make no claim for wages or provisions while

the vessel is detained by ice prior to departure" was not void under this section. *The Lillian*, D.C.Pa.1904, 131 F. 375.

A steamship owner's agreement to pay crew members \$100 each as extra compensation for sailing vessel from Hampton Roads, to which it had returned after leaving convoy because of unseaworthiness, to Baltimore for discharge of damaged cargo of dynamite and repairs, was valid, and based on adequate and fair consideration. *The Louise*, D. C.Md.1943, 54 F.Supp. 157.

In an admiralty proceeding by seamen against a vessel for wages claimed to be due them, the failure to have inserted in the shipping articles, before they were executed before a United States shipping commissioner, the time each seaman was to be on board to begin work, in violation of section 564 of this title, as amended by section 563 of this title, and of this section and sections 565 and 576 of this title, will justify a decision in favor of libelants, where the testimony is evenly balanced as to the time the men were required to be on board. *The Shetland v. Johnson*, 1903, 21 App.D.C. 416.

3. Time, determination of

A seaman, who signed articles before a shipping commissioner at a distance

from the vessel, to which he was furnished transportation, arriving on the same day at 6 p.m., was in the service of the ship that day, and entitled to wages therefor. *The Alice B. Phillips*, D.C.N.Y.1901, 106 F. 956.

Seamen are entitled to wages for both the day on which they were shipped and the day on which they were discharged, without regard to the hour. *Id.*

§ 592. Wages not dependent on freight earned

No right to wages shall be dependent on the earning of freight by the vessel; but every seaman or apprentice who would be entitled to demand and receive any wages if the vessel on which he has served had earned freight, shall, subject to all other rules of law and conditions applicable to the case, be entitled to claim and recover the same of the master or owner in personam, notwithstanding that freight has not been earned. But in all cases of wreck or loss of vessel, proof that any seaman or apprentice has not exerted himself to the utmost to save the vessel, cargo, and stores shall bar his claim. R.S. § 4525.

Historical Note

Derivation. Act June 7, 1872, c. 322, § 32, 17 Stat. 263.

Cross References

Application of section to sail or steam vessels engaged in coastwise trade, see section 544 of this title.

Notes of Decisions

Agreements 3
Liability for wages 4
Prior law 1
Purpose 2

1. Prior law

The rule that freight is the mother of wages does not apply to a fishing or sealing voyage. *The Ocean Spray*, D.C. Or.1876, Fed.Cas.No.10,412.

The rule that freight is the mother of wages does not apply to a voyage made in ballast. *Waling v. The Christina*, D. C.Or.1862, Fed.Cas.No.17,059.

Inability to obtain freight is not such a necessity as absolves the owner from his contract to perform the voyage described in the articles. *Thompson v. The Oakland*, D.C.Mass.1841, Fed.Cas.No. 13,971.

Seamen are entitled to wages for the full period of their employment in the ship's service for any particular voyage in which freight is or might be earned by the owner. *Pitman v. Hooper*, C.C. Mass.1838, Fed.Cas.No.11,186.

Private contracts between shipowners and shippers in regard to freight can-

not affect the seamen's right to wages. *Pitman v. Hooper*, C.C.Mass.1837, Fed. Cas.No.11,185.

Where freight is earned it is not material that it has not been received by the master or owners. *Id.*

Where only part of freight is allowed, wages are diminished in proportion. *Brown v. Lull*, C.C.Mass.1836, Fed.Cas. No.2,018.

Where freight is earned or damages recovered in lieu of freight, though inadequate, seamen are entitled to wages, except where the recovery is against insurers. *Ardrey v. Karthaus*, C.C.Md. 1836, Fed.Cas.No.511.

Wages fall with loss of cargo and freight. *Adams v. The Sophia*, D.C.Pa. 1829, Fed.Cas.No.65.

There are exceptions to the rule that, to entitle to wages, freight must be earned. *The Saratoga*, C.C.Mass.1814, Fed.Cas.No.12,355.

The fact that the cargo belongs to the owner of the vessel does not destroy the connection between freight and wages. *Rand v. The Hercules*, D.C.Mass.1811, Fed.Cas.No.11,548. See, also, *Skolfield v. Potter*, D.C.Me.1849, Fed.Cas.No.12,925.

Freight will be considered to have been earned on a portion of a cargo belonging to the owner of the vessel, landed without interference, and its subsequent confiscation will not affect the right to wages. *Rand v. The Hercules*, D.C.Mass.1811, Fed.Cas.No.11,548.

Wages decreed upon the master's certificate that they were due, though the vessel was in port not earning freight. *Minors v. The Mary*, D.C.S.C.1798, Fed. Cas.No.9,644.

Where freight is lost by the fraud or wrongful act of the master, seamen are still entitled to their wages. *Henop v. Tucker*, C.C.N.Y., Fed.Cas.No.6,368.

Where vessel was compelled, in consequence of springing a leak, to put back for repairs and the seamen made no application for repairs, under the laws of the United States, but the owners voluntarily made repairs; and the vessel, after the repairs, was, in the opinion of the master carpenter and three shipbuilders, perfectly seaworthy, though seven journeymen carpenters were of opinion that she was not seaworthy and on that ground the crew refused to proceed on the voyage, no freight having been earned, and the loss of the voyage not being imputable to the master or owners, the seamen were not entitled to wages, and they could not set up the opinion of the journeymen to excuse the breach of their contract and justify the demand of wages. *Porter v. Andrews*, N.Y.1812, 9 Johns. 350.

Seamen, in general, were not entitled to wages, if no freight had been earned, but if the freight be lost by any fault or wrongful act of the master or owners, or any act of omission on the part of the master or owners, over which the seamen have no control, they were entitled to their wages. *Hoyt v. Wildfire*, N.Y.1808, 3 Johns. 518. See, also, *Van Beuren v. Wilson*, N.Y.1828, 9 Cow. 158, 18 Am.Dec. 491; *Icard v. Goold*, N.Y. 1814, 11 Johns. 279.

Where a vessel on a voyage merely earns passage money, and no regular freight seamen were not entitled to wages. *Patten v. Park*, N.Y.1808, Anth. N.P. 32.

2. Purpose

The principal object of this and section 593 of this title was to abolish the

ancient rule of the sea which made the right of wages depend upon the earnings of freight by the vessel. *Brown v. Chandler*, D.C.Cal.1877, 4 Fed.Cas.No.1,998. See, also, *The Saratoga*, C.C.Mass.1814, 2 Gall. 164, Fed.Cas.No.12,355; *The Ocean Spray*, D.C.Or.1876, 4 Sawy. 105, Fed.Cas. No.10,412; *The Nippon's Crew*, C.C.Mass. 1849, Brun.Co.Cas. 577, Fed.Cas.No.10,277.

3. Agreements

Where agreement to pay seaman out of profits of freight carried on voyage was void, and voyage was unprofitable and seamen were paid nothing after working for over three months and subsisting themselves for greater portion of that time, they were entitled to judgment in rem against vessel for wages. *Masset v. The Explorer*, D.C.La.1950, 89 F.Supp. 477, modified on other grounds 187 F.2d 895.

Wages cannot be made dependent upon freight, and an agreement to that effect is void. *The Constellation*, D.C.N.Y.1937, 20 F.Supp. 892.

The owner could not avoid liability to seaman under agreement to pay him for looking after vessel at anchorage during winter months, on ground that wages were not to be paid until vessel, which was still at anchorage, went on a tour, since such a restriction upon time of payment would be void. *Id.*

4. Liability for wages

Where owner of vessel allows another complete control thereof for indeterminate time, latter alone is personally liable on his wage contracts. *The John H. Berwind*, C.C.A.N.Y.1932, 56 F.2d 13.

When one master is displaced by another, and the ship's funds turned over to the latter, all relation to the ship and seamen ceases, and the liability of the displaced master for future wages ends, but a master who turned over all the ship's funds to his successor is liable under this section to a seaman for wages due at the time of the substitution of masters, and payments thereafter made will be credited to the accounts of his successor, in the absence of evidence that any of the ship's money turned over to his successor was paid to seamen. *McCall v. United States Shipping Board Emergency Fleet Corp.*, D.C.Wash.1924, 294 F. 969.

§ 593. Termination of wages by loss of vessel; transportation to place of shipment

In cases where the service of any seaman terminates before the period contemplated in the agreement, by reason of the loss or wreck of the vessel, such seaman shall be entitled to wages for the time of service prior to such termination, but not for any further period. Such seaman shall be considered as a destitute seaman and shall be treated and transported to port of shipment as provided in sections 678 and 679 of this title. This section shall apply to fishing and whaling vessels but not to yachts. R.S. § 4526; Dec. 21, 1898, c. 28, §§ 3, 26, 30 Stat. 755, 764; Mar. 5, 1934, c. 40, 48 Stat. 395.

Historical Note

Derivation. Act June 7, 1872, c. 322, § 23, 17 Stat. 269.

Codification. Act Dec. 21, 1898, added the second sentence and substituted "loss or wreck" for "wreck or loss" in the first sentence of R.S. § 4526.

1934 Amendment. Act Mar. 5, 1934 provided that this section "shall apply to fishing and whaling vessels, notwithstanding the provisions of section 26" of

Act Dec. 21, 1898. See provisions of that section in Historical Note to section 701 of this title.

Exception. Section 26 of Act Dec. 21, 1898, provided that R.S. § 4526 should not apply to fishing or whaling vessels or yachts. Act Mar. 5, 1934, provided that this section should apply to fishing and whaling vessels, notwithstanding said act Dec. 21, 1898.

Cross References

Application of section to vessels in the coastwise trade, etc., see section 563 of this title.

Notes of Decisions

Generally 1

Capture and condemnation

Generally 6

Particular cases 7

Condemnation 6

Fault, wreck or loss 3

Salvage, wreck or loss 4

Termination of voyage 3

Wreck or loss 2-5

Generally 2

Fault 3

Particular cases 5

Salvage 4

1. Generally

Where services of seamen are terminated by loss or wreck of the vessel so that seamen are entitled to wages up to the time of the termination under this section, seamen are not entitled to recover wages as in case of an improper discharge under section 594 of this title. *Argonstis v. Erini Shipping Co.*, C.A.N. Y.1949, 177 F.2d 461.

This section respecting termination of wages by loss of vessel and section 594

of this title respecting right to wages in case of improper discharge, where applicable, embrace all seamen suing for wages in the United States ports though vessel is registered under laws of a foreign country. *Id.*

This section supersedes rule of general maritime law. *Drew v. Pope*, D.C.Cal. 1871, Fed.Cas.No.4,080.

2. Wreck or loss—Generally

The crew of a vessel voluntarily stranded to avoid being driven on a rocky and dangerous part of the coast are entitled to wages, while employed in saving the cargo, even after the sale of the vessel is determined upon. *Barnard v. Adams*, N.Y.1850, 51 U.S. 270, 10 How. 270, 13 L.Ed. 417.

"A ship, to be lost or wrecked within the meaning of R.S. section 4526 [this section] does not have to be completely destroyed, but if she is so injured by encountering ordinary perils of navigation as to be unfit to complete the particular voyage commenced, the terms of the stat-

Note 2

ute are met, and the seamen receive all they can legally claim when they are paid wages at the contract rate for the time of actual service." The Quaker City, D.C.Md.1923, 290 F. 409.

When seamen are to be paid for the voyage, generally speaking, nothing is earned, unless the voyage is completed; but when a voyage is interrupted by perils of the sea, so that it cannot be completed, seamen hired for the voyage are entitled to discharge, and if their services rendered have been of benefit to the vessel they are entitled to pay on an equitable basis, otherwise to no wages. The Helen Fairlamb, D.C.Pa.1918, 251 F. 412.

If a vessel is lost to her owners without fault on their part, or if she is so injured by encountering ordinary perils of navigation as to be unfit to complete the particular voyage commenced, the terms of the section are met, and the seamen receive all they can legally claim when they are paid wages at the contract rate for the time of actual service. The Charles D. Lane, D.C.Wash.1901, 106 F. 746.

The decision of the master of a vessel as to the actual termination of the seamen's services, will be supported, unless some wrong or injustice be practiced on the seamen and survey and condemnation of a vessel is not a necessary ingredient of wreck. Flanagan v. U. S. & Brazil Mail S. S. Co., D.C.N.Y. 1886, 30 F. 202.

Where seamen ship for a voyage at a stated sum as compensation, and the voyage is broken up by disaster or peril of the sea, and no cargo is carried or freight earned, no recovery can be had for the time services were rendered by the seamen and the court cannot override the contract and award compensation to the seamen upon the quantum meruit. Stark v. Mueller, D.C.Ill.1884, 22 F. 447.

Seamen, who, after stranding of the vessel, are retained at a near-by port, under direction of the master, until hope of getting her off is abandoned, are entitled to wages to the time of their actual discharge. Tarleton v. Mallory, D.C.N.Y.1878, Fed.Cas.No.13,758.

A stipulation in articles that seamen shall not demand wages until the arrival of the vessel at her final port of destination does not bar the seamen of their wages in case the vessel is lost before arriving at that port. The General Chamberlain, D.C.Me.1872, Fed.Cas.No.5,310.

The crew of a vessel abandoned at sea have a lien on her, in the hands of salvors, for wages to the last port of delivery before abandonment, where they were shipped for an indefinite period. Smith v. The Joseph Stewart, D.C.Pa. 1870, Fed.Cas.No.13,070.

The lien for wages continues after the wreck of the vessel, subject to salvors' liens. Collins v. The Fort Wayne, D.C. Ohio 1861, Fed.Cas.No.3,012.

When a vessel is lost on the homeward voyage, and has or might have earned freight on the outward voyage, seamen's wages are due for the outward voyage and for one-half the time spent in the port of destination. Farrell v. Mayers, D.C.Cal.1859, Fed.Cas.No.4,685.

The standard of seaworthiness, with respect to liability for seamen's wages after a wreck, varies with the character of the voyage and the nature of the cargo. Id.

The master cannot deduct from the wages of seamen of a wrecked British vessel expenses of their board and transportation home. MacPherson v. Blytheswood, D.C.Pa.1855, Fed.Cas.No.8,920.

Where a whaler is lost, and the cargo sent home, the seamen's remedy is against the owner for his lay, and not against the master for wages. Joy v. Allen, C.C.Mass.1846, Fed.Cas.No.7,552.

Liability exists for wages of seamen duly discharged in a home port after a wreck, notwithstanding general maritime law, when the shipping articles promise wages unless forfeited by misconduct. Davis v. Faucon, D.C.N.Y.1843, Fed.Cas.No.3,632b.

On a shipwreck and sale of the vessel abroad, a seaman not entitled to extra wages is entitled to a sum to defray his expenses home, to be paid from the proceeds. The Dawn, D.C.Me.1841, Fed.Cas. No.3,866.

Seamen of vessel lost on homeward voyage are entitled to wages to the time of discharge of cargo on outward voyage, but not for any of the time she remained in port. Bronde v. Haven, D.C. Pa.1836, Fed.Cas.No.1,924.

Where seamen abandon the wreck, they lose their right to wages. The Two Catherinees, C.C.R.I.1821, Fed.Cas.No.14,288. See, also, Lewis v. The Elizabeth and Jane, D.C.Me.1823, Fed.Cas.No.8,321.

Where the vessel is wrecked on the homeward voyage, the seamen are entitled to wages from the port at which she was laden, though she only carried

ballast between such port and that of the destination of her outward cargo. *The Two Catherines*, C.C.R.I.1821, Fed. Cas.No.14,288.

Where the voyage has been broken up by shipwreck, and the cargo is sent home by another vessel, it seems that the seamen are entitled to have the expense of their journey home paid to them out of the proceeds of the sale of the ship. *Worth v. Mumford*, N.Y.1855, 1 Hilt. 1.

Forfeiture of wages is limited to cases of total loss of ship and cargo. *Id.*

A vessel which is so injured by encountering ordinary perils of navigation as to be unfit to complete the particular voyage commenced, is "lost or wrecked," within the meaning of this section, and the seamen employed for such voyage may rightfully be discharged on her return to the port of departure, and are entitled to recover wages only for the time actually served. *Blanchard v. Buckman*, 1824, 3 Me. 1, 3 Greenl. 1.

3. — Fault

Where ship had latest chart which failed to show rock which whaling ship struck while approaching harbor, and it did not appear that any one had any intimation that there was a rock in such place, ship was not negligent so as to entitle crew on whaler to damages because of resulting loss of three weeks of the killing season. *Borup v. Western Operating Corporation*, C.C.A.N.Y.1942, 130 F.2d 381, certiorari denied 63 S.Ct. 77, 817 U.S. 672, 87 L.Ed. 540.

If the stranding of the steamer was caused by the intoxication of the master, it was none the less a case of a termination of the seamen's service by reason of the wreck of the vessel within the meaning of this section. *Flanagan v. U. S., etc., Mail Steamship Co.*, D.C.N.Y. 1886, 30 F. 202.

Where collision between two vessels, each with separate owners, was caused by allegedly negligent acts of respondents, captain and crew of vessel damaged could not maintain libel for loss of earnings due to lay-up of vessel. *Hayes v. Luckenbach S. S. Co.*, D.C.Mass.1850, 92 F.Supp. 684.

Burden of proving that wreck was without fault of shipowner as respected government's liability for care of destitute seamen rested upon government. *American Scantic Line, Inc., v. U. S.*, D.C.N.Y.1933, 5 F.Supp. 410.

Seamen are entitled to three months' extra wages where the vessel is cast

away by the master under this section and sections 684 and 685 of this title. *Brown v. Chandler*, D.C.Cal.1877, Fed. Cas.No.1,998.

Where the loss is without the owner's privity, he is liable only to the extent of the proceeds of the vessel, after payment of wages to the termination of the voyage. *Id.*

Evidence was insufficient to show that the voyage was broken up by the fault of the owner, where the vessel was run on a reef in a well-known channel, where there was plenty of room, and the master was a man of experience. *Hill v. Murray*, D.C.N.Y.1872, Fed.Cas.No.6,495.

Wreck and loss of freight caused by a master's negligence do not free the owners from liability for seamen's wages. *Davis v. Faucon*, D.C.N.Y.1843, Fed.Cas. No.3,632b.

Where the negligence of a master is in issue, the failure to show or account for the chart used by him raises an inference that the shoal where the vessel was wrecked was set down thereon. *Id.*

4. — Salvage

The wages earned by seamen after their vessel had been wrecked, but before she was finally abandoned, do not constitute antecedent wages, in a sense which would postpone them to the claims of the salvors; and the proceeds derived from the sale of the outfit of the vessel must first be applied to the payment of the demands of such seamen. *Dalstrom v. The El. M. Davidson*, D.C.Wis.1880, 1 F. 259.

Salvage paid by master of whaler acting with prudence and in good faith is a charge upon the oil binding on the crew. *The Antelope*, D.C.Mass.1837, Fed. Cas.No.484.

Where the owner of a wrecked vessel takes the business of salvage out of the hands of the seamen, and furnishes them no subsistence, they may recover wages from the remnants. *The Massasoit*, D.C.Mass.1844, Fed.Cas.No.9,260.

Where seamen save remnants of their wrecked vessel to the amount of their wages they are entitled to wages as such, though no freight be earned. *The Dawn*, D.C.Me.1841, Fed.Cas.No.3,666. See, also, *The Massasoit*, D.C.Mass.1844, Fed.Cas.No.9,260.

The seamen are not entitled to recover wages, as such, on the cargo brought to the port of destination by salvors. *Reed v. Hussey*, D.C.N.Y.1836, Fed.Cas. No.11,646.

Note 4

Seaman's interest in such cargo, as quasi owner, may be equitably secured to him, subject to the proper charges for salvage and transportation. *Id.*

Seamen are entitled to wages in the case of shipwreck, where the cargo is saved and freight is earned. *Reif v. The Maria*, D.C.Pa.1805, Fed.Cas.No.11,692. See, also, *The Dawn*, D.C.Me.1841, Fed.Cas.No.3,666.

In case of wreck, the seaman is entitled to wages out of the goods saved for the time served before the loss, and thereafter in caring for the goods saved. *Weeks v. The Catharina Maria*, D.C.Pa.1790, Fed.Cas.No.17,351.

Where the owner of a ship insured the freight, and, the ship having been wrecked near the port of discharge, he abandoned to the underwriters, and the seamen saved from the wreck enough to pay their wages, and also part of the cargo, the seamen were entitled to their wages. *Daniels v. Atlantic Mut. Ins. Co.*, 1862, 24 N.Y. 447.

Where a portion of a vessel or her cargo is saved by the meritorious and extraordinary exertions of the seamen, although a new lien in the nature of salvage may arise thereon, they have no claim for their wages, since the freight is lost, and the original contract annulled. *Dunnett v. Tomhagen*, N.Y. 1808, 3 Johns. 154.

5. — Particular cases

Messman who was captured by a German raider was not entitled to a bonus for period he thereafter spent on land, nor was he entitled to have period after capture counted in computing increase in base pay rate or in determining vacation rights, since after sinking of his ship and capture messman was no longer in active service. *Montoya v. Tide Water Associated Oil Co.*, C.A.N.Y.1949, 174 F.2d 607, certiorari denied 70 S.Ct. 89, 338 U.S. 847, 94 L.Ed. 519.

Torpedoing by Germany of American vessel terminated voyage, articles contemplating such termination by prescribing that voyage might extend through war zone; and hence, under this section, seamen were entitled only to wages prior to that event. *Foreman v. J. M. Benas & Co.*, D.C.N.Y.1917, 247 F. 133.

Where seamen shipped for a round trip, and by reason of a collision with another vessel the voyage was broken up, but they were induced by the master to proceed with the schooner to the port of delivery, and on arriving at the port of delivery they refused to aid in dis-

charging the vessel, and claiming their discharge, which was denied by the master, they left and returned to the port of departure, the vessel having been laid up at a distant port for the winter, and unable to complete the voyage till spring, the seamen were entitled to their discharge without completing the round trip, and to compensation for services actually rendered, based upon the principles of a quantum meruit. *Thorson v. Peterson*, C.C.Ill.1883, 14 F. 742.

Seamen's contracts to ship on a sailing vessel for the voyage are terminable at the will of the parties, on her arrival at a port of safety, by the dismasting of the vessel in a collision. *Thorson v. Peterson*, D.C.Ill.1881, 9 F. 517.

Owner of shipwrecked vessel did not have duty to repatriate shipwrecked seamen even though it had other vessels available for that purpose, but statutory obligation of the United States to repatriate the seamen was unequivocal. *American Mail Line v. U. S.*, 1945, 59 F. Supp. 921, 105 Ct.Cl. 1.

Where vessel was in bad condition and was ordered into port and libels were filed so that voyage was not completed but there was no evidence of improper discharge of members of crew and vessel was not a loss or wreck, the members of crew were not entitled to passage money back to port from which they shipped. *The Herbert L. Rawding*, D.C.S.C.1944, 55 F.Supp. 156.

Where it appears that the master used his best judgment in abandoning a ship loaded with railroad iron, and leaking in heavy weather, seamen will not be allowed wages for the whole voyage on the ground that the vessel was fraudulently abandoned. *White v. Adams*, D.C.N.Y. 1871, Fed.Cas.No.17,534.

Where a ship was abandoned and set fire to at sea by order of the master, the crew were not entitled to any wages, though the ship was insured and certain articles were saved. *The Nippon's Crew*, C.C.Mass.1849, Fed.Cas.No.10,277.

Where one vessel is run foul of and sunk by another vessel, the seamen are not entitled to their wages, though the owner of the vessel which was lost recovers the full value of the vessel and cargo, in an action for damages. *Perdual v. Hickey*, N.Y.1820, 18 Johns. 257, 9 Am.Dec. 219.

Where a seaman was engaged for the voyage, it being stipulated that no officer or seaman should be entitled to any part of his wages until the arrival of the ship at her port of discharge in the United

States and her cargo delivered, and on the passage homeward the vessel was lost, seaman was entitled to his wages up to the port of lading, and for half the time the ship was lying at such port before sailing for home. *Swift v. Clark*, 1818, 15 Mass. 173.

6. Capture and condemnation—Generally

Voluntary stranding for the purpose of repairs, and subsequent capture by Indians, resulting in loss of the vessel, are good defenses to suits for seamen's wages. *Farrell v. Mayers*, D.C.Cal.1859, Fed.Cas.No.4,685.

The seaman has an absolute right to wages for the portion of the voyage performed, on the capture and condemnation of the vessel, and a claim therefor is barred by lapse of time, though the owner is subsequently indemnified. *Pitman v. Hooper*, C.C.Mass.1838, Fed.Cas.No.11,186.

Where, in case of the capture and condemnation of a vessel, the owners recover a portion of their claim against the government, wages are due the seamen out of such fund to the time of condemnation, without deduction for expenses of recovery, or abatement, in the same proportion as the original claim. *Vandever v. Tilghman*, D.C.Pa.1837, Fed.Cas.No.16,846.

Where the owner of vessel and cargo captured and condemned receives indemnity therefor from the country of the captors, the seamen are entitled to full wages, though the indemnity covered only one-third the loss. *Pitman v. Hooper*, C.C.Mass.1837, Fed.Cas.No.11,185. See, also, *Pitman v. Hooper*, C.C.Mass.1838, Fed.Cas.No.11,186.

The capture of a neutral ship operates, at most, only as a suspension of the contract for wages, and the seaman is entitled to full wages, if, without fault of his own, he is unable to complete the voyage. *Brown v. Lull*, C.C.Mass.1836, Fed.Cas.No.2,018.

It is the right and duty of the mariners of a neutral ship, after capture, and even after condemnation, to remain by the ship, while there is any hope of recovering the property. *Id.*

In the case of capture, seamen are entitled to wages to date of condemnation. *Willard v. Dorr*, C.C.Mass.1823, Fed.Cas.No.17,630. See, also, *Vandever v. Tilghman*, D.C.Pa.1837, Fed.Cas.No.16,846; *Bordman v. Elizabeth*, D.C.Pa.1798, Fed.Cas.No.1,657; *Arday v. Karthaus*, C.C.Md.1836, Fed.Cas.No.511.

If during the voyage there be a capture and final restitution decree, the right to wages is not complete until the restitution. *Willard v. Dorr*, C.C.Mass.1822, Fed.Cas.No.17,679. See, also, *Brown v. Lull*, C.C.Mass.1836, Fed.Cas.No.2,018.

The last port of lading of a cargo made up at several ports is that to which wages should be paid, where the vessel is captured on her homeward voyage. *Thompson v. Faussat*, C.C.Pa.1815, Fed.Cas.No.13,954. See, also, *The General Chamberlain*, D.C.Me.1872, Fed.Cas.No.5,310; *Giles v. The Cynthia*, D.C.Pa.1801, Fed.Cas.No.5,424; *Cranmer v. Gernon*, D.C.Pa.1807, Fed.Cas.No.3,359.

A capture, unless followed by condemnation, does not dissolve the contract for wages; it is suspended during prize proceedings, and upon a decree of restoration it revives. *The Saratoga*, C.C.Mass.1814, Fed.Cas.No.12,355. See, also, *Watson v. The Rose*, D.C.Pa.1806, Fed.Cas.No.17,288; *Emerson v. Howland*, C.C.Mass.1816, Fed.Cas.No.4,441; *Clayton v. The Harmony*, D.C.Pa., Fed.Cas.No.2,871.

Where a vessel is captured and finally acquitted, seamen are entitled to full wages, including the time of detention even though the master offered to discharge them and send them home, and they refused. *Wesley v. Blays*, C.C.Md.1812, Fed.Cas.No.17,419.

Where the vessel is captured, seamen are entitled to wages to the last port of unloading. *Jones v. Smith*, C.C.Md.1812, Fed.Cas.No.7,497.

Where a captured vessel is recaptured, and restored on payment of salvage, a seaman taken therefrom, and unable to rejoin the vessel, is entitled to full wages, less a deduction for salvage. *Williams v. The Juno*, D.C.Mass.1810, Fed.Cas.No.17,724.

Legal obligations of seamen do not continue after capture of vessel. *Clayton v. The Harmony*, D.C.Pa.1807, Fed.Cas.No.2,871.

Where the ship is captured by a belligerent and condemned, the seamen lose their wages, though the owner receives full insurance on the freight. *McQuirk v. The Penelope*, D.C.Pa.1806, Fed.Cas.No.8,925.

Seamen bound to remain with captured vessel until an adjudication. *Bordman v. Elizabeth*, D.C.Pa.1798, Fed.Cas.No.1,657.

If a ship, on her outward voyage, is seized, detained, and afterwards restored, and she performs the voyage, a seaman is entitled to his wages for the time of such detention; but if a ship is detained

Note 6

in like manner on her homeward voyage, and is lost, a seaman loses his wages for the time of such detention. *Hooper v. Perley*, 1814, 11 Mass. 545.

Where a voyage is broken up by the capture and condemnation of the vessel by a foreign power, the seamen cannot enforce a claim for wages, even though forbidden by the master to leave the ship. *Lemon v. Walker*, 1812, 9 Mass. 404.

Where a vessel is captured, the seamen lose their wages from the last port of delivery and during half the time of continuance there. *Galloway v. Morris*, Pa.1802, 3 Yeates 445.

7. — Particular cases

Under this section, seizure of vessel by British naval vessel as a prize terminated right to wages, though vessel was subsequently released to her owners. The *Edna*, D.C.Cal.1923, 292 F. 640.

Where a ship on a voyage was captured as a prize of war, and the voyage was never completed, the seamen, who performed no service after the capture, under this section were entitled to transportation to port of shipment as destitute seamen, but were not entitled to wages after their service ceased. The *Edna*, D.C.Cal.1923, 291 F. 379.

Seamen forcibly put on shore by the captors, from a vessel, afterwards ransomed, and arriving at her destination under a new crew, were entitled to wages, subject to a contribution for the ransom. *Girard v. Ware*, C.C.Pa.1815, Fed.Cas. No.5,460.

The payment to the supercargo of the proceeds of a condemned vessel after reversal on appeal, except a part retained as a pledge that the proceeds of certain cargo should be exported in certain productions, was a restoration entitling the seamen to wages to the time of condemnation. *Powell v. The Betsy*, D.C.Pa. 1813, Fed.Cas.No.11,355.

Where a vessel had been captured and condemned, and was restored, the seamen were entitled to full wages. *Hitchen v. Wilson*, C.C.Md.1812, Fed.Cas.No. 6,541. See, also, *Howland v. The Lavinia*, D.C.Pa.1801, Fed.Cas.No.6,797; *Hart v. The Littlejohn*, D.C.Pa.1800, Fed.Cas. No.6,153.

Seamen taken from their vessel by a privateer, and afterwards escaping, and returning home, some of them earning wages on the return, were entitled to wages for the voyage, deducting the amount so earned, where their vessel was afterwards liberated and completed her

voyage. *Singstrom v. The Hazard*, D.C. Pa.1807, Fed.Cas.No.12,905.

Where a vessel went to a port out of her course, and there sold part of her cargo, and was afterwards captured, wages were decreed her seamen up to the time of such sale. *Lindsey v. The South Carolina*, D.C.S.C.1801, Fed.Cas.No.8,368.

Where shipping articles provided for a voyage to "Surinam, and at and from thence back to the port of Philadelphia or to any port in Europe," and it was further agreed that no seaman "shall demand or be entitled to his wages, or any part thereof, until the arrival of the said ship at the above-mentioned port of discharge in Philadelphia" and where the vessel was captured after unloading a part of her cargo at a foreign port and while returning to Philadelphia with the residue, the seamen were entitled to wages to the foreign port and for half the time the vessel stayed there. *Johnson v. Sims*, D.C.Pa.1800, 1 Pet.Adm. 215, Fed.Cas.No.7,413.

Where during the existence of war with the United States a vessel from the United States discharged her outward cargo at a foreign port, and on her return with the cargo was captured by the enemy, in an action to recover wages by a seaman, he was entitled to recover wages to the time of the delivery of the outward cargo, and also for half the time of the continuance of the vessel in such foreign port. *Brown v. Caon*, N.Y.1816, 1 City Hall Rec. 179.

Where a merchant vessel sailed to a foreign port, discharged her outward cargo, took on board her return cargo, and on her return was captured by the public enemy, the seamen were not entitled to recover wages from the owners beyond the time of the passage of the vessel to such foreign port and half the time of her continuance there, notwithstanding the vessel received on board a great number of passengers for her return trip, who paid their passage money in advance. *Butler v. Adams*, N.Y.1816, 1 City Hall Rec. 119.

A ship captured during her voyage, and her crew taken out and detained prisoners of war, was afterwards recaptured, and proceeded on her voyage, the master having hired a new crew, and arrived at her last port of delivery, and earned freight, seamen who were taken out, though never restored to the ship, were entitled to wages for the whole voyage, deducting only their proportion of the salvage paid to the recaptors. *Wetmore v. Henshaw*, N.Y.1815, 12 Johns. 324.

Where a seaman shipped on a voyage to a foreign country and back to United States and the ship was captured on her homeward voyage, seaman was entitled to his wages for the outward voyage and for one-half the time of the ship's stay in the foreign port. *Hooper v. Perley*, 1814, 11 Mass. 545.

8. Termination of voyage

Where voyage was interrupted due to perils of the sea the master was entitled to discharge the crew and pay them wages only up to the date of discharge and the seamen were not entitled to claim 39 days additional wages beyond period of their service and penalty for nonpayment of such additional wages. *Avgoustis v. Erini Shipping Co.*, C.A. N.Y.1949, 177 F.2d 461.

This section relates only to the termination of service in a foreign port and not to termination at a port of the United States other than the agreed terminus of the voyage. *The Jacob Luckenbach*, D.C.La.1929, 36 F.2d 381.

Seamen on vessel seized by marshal under libel for maritime lien, were entitled to passage money from port of seizure to port from which they had shipped. *The Trader*, D.C.S.C.1926, 17 F.2d 623.

Where seamen were entitled to transportation back to their shipping port, a decree for their wages which provided that, if transportation and subsistence were not furnished, each libellant should receive the amount set opposite his name, was proper in form. *Gerber v. Spencer*, C.C.A.Cal.1922, 278 F. 886.

Where a vessel on the Great Lakes is laid up at an intermediate point in a voyage by reason of the closing of navigation on account of winter, the contract of service with the seamen shipped for a single voyage is at an end and they are at liberty to abandon the voyage, and the vessel has the right to employ other seamen in the spring when navigation opens, but where on the close of navigation such seamen are discharged they are entitled to their wages up to the time of their discharge and to their expenses in returning to the place of departure, and also to their wages during the time occupied in the journey to such place of departure. *Boulton v. Moore*, C.C.Ill. 1883, 14 F. 922.

Provision in shipping articles for the payment of "maintenance in port" was referable only to port calls incidental to an active voyage and did not include maintenance after the voyage's end. *Agnew v. America President Lines*, D.C. Cal.1947, 73 F.Supp. 944, affirmed in part and reversed in part on other grounds 177 F.2d 107, certiorari denied 70 S.Ct. 833, 3 mems., 339 U.S. 951, 94 L.Ed. 1384.

Where shipping articles provided for the payment of wages only as fixed by collective bargaining beyond termination of the voyage, there could be no implied obligation to pay maintenance after such termination. *Id.*

The voyage will be held to be broken up by the confiscation of the vessel, though she is afterwards restored on condition of making a special voyage. *Rand v. The Hercules*, D.C.Mass.1811, Fed.Cas.No.11,548.

Where a voyage was broken up at an intermediate port, and the vessel condemned and sold, the cargo was removed and forwarded in another ship at an increased freight, which left no profit for the shipowners, wages for services rendered up to the time of the condemnation of the vessel had been earned. *Worth v. Mumford*, N.Y.1855, 1 Hilt. 1.

Where plaintiff shipped on a voyage from New York to Newry, in Ireland, and back again to New York, and the ship was libeled in the Irish admiralty court by one claiming to be owner, and the crew discharged by the captain, and the ship, after being detained more than a year, was restored, but so out of repair that she was abandoned to the insurers, and never returned to New York, plaintiff should recover his wages for the return voyage. *Van Beuren v. Wilson*, N.Y.1828, 9 Cow. 158, 18 Am.Dec. 491.

Where a voyage is broken up, not from necessity or in consequence of the perils of the sea, but from the act of the master, the seamen are entitled to payment of their wages to the time, and also for a reasonable time to be allowed for their return home. *Sullivan v. Morgan*, N.Y. 1814, 11 Johns. 66.

Where a voyage is broken up abroad by a seizure for violating the revenue laws of a foreign country, the seamen are only entitled to wages to the time of the seizure. *Oxnard v. Dean*, 1813. 10 Mass. 143.

§ 594. Right to wages in case of improper discharge

Any seaman who has signed an agreement and is afterward discharged before the commencement of the voyage or before one month's wages are earned, without fault on his part justifying such discharge, and without his consent, shall be entitled to receive from the master or owner, in addition to any wages he may have earned, a sum equal in amount to one month's wages as compensation, and may, on adducing evidence satisfactory to the court hearing the case, of having been improperly discharged, recover such compensation as if it were wages duly earned. R.S. § 4527.

Historical Note

Derivation. Act June 7, 1872, c. 322, § 21, 17 Stat. 266.

Cross References

Application of section to sail or steam vessels engaged in coastwise trade, see section 544 of this title.

Seamen in coastwise trade, etc., to receive wages under this and enumerated sections, see section 563 of this title.

Notes of Decisions

Generally 3
 Acts constituting discharge 5
 Coastwise trade 8
 Commencement of voyage 6
 Construction 1
 Evidence 13
 Failure of voyage 11
 Interest 19
 Jurisdiction 17
 Justification for discharge
 Generally 9
 Particular cases 10
 Law governing 2
 Lien for wages 14
 Monthly employment 13
 Persons liable 7
 Release 13
 Seamen within section 4
 Wages
 Not recoverable 15
 Recoverable 16
 Waiver or release 13

1. Construction

This section was intended to afford a simple summary method of establishing and enforcing damages, and should be liberally applied, especially where abandonment of voyage and discharge of crew are not occasioned by fault of crew but by owner's failure to make necessary provisions for voyage. *Ylavianos v. The Cypress*, C.A.Md.1948, 171 F.2d 435, certiorari denied 69 S.Ct. 1168, 337 U.S. 924, 93 L.Ed. 1732.

In construing this section to give effect to legislative intent to adopt substantially Shipping Commissioner's Act of England, words appearing in English Act showing proper relationship between different sections of Act may be read into this section. *Newman v. U. S.*, D.C. N.Y.1943, 50 F.Supp. 66.

2. Law governing

Provision in the ship's articles that rights of signers thereof should be determined exclusively by the Commercial Code, the Civil Code, and other laws of Panama under which the ship was registered did not affect the seamen's rights to sue for discharge due to "loss or wreck of the vessel" but their rights were specially limited by this section respecting termination of wages by loss of the vessel. *Avghostis v. Erini Shipping Co.*, C.A.N.Y.1949, 177 F.2d 461.

State court construing this section was bound by federal decisions. *Arwine v. Alaska S. S. Co.*, 1937, 65 P.2d 695, 189 Wash. 437.

3. Generally

The failure to use the word "provisions" in connection with the word "wages" in sections 591-605 of this title providing for payment of a month's wages to seamen wrongfully discharged indicates congressional intent to exclude payment of a month's maintenance on such discharge. *Newman v. United Fruit*.

Co., C.C.A.N.Y.1944, 141 F.2d 191, certiorari denied 65 S.Ct. 37, 323 U.S. 711, 89 L.Ed. 572.

All that is necessary to give a seaman right to one month's wages under this section providing that a seaman shall have the right to a month's wages in case of improper discharge is that the discharge be before commencement of voyage or before one month's wages are earned, that discharge be without fault on seaman's part justifying his discharge, and that the discharge be without his consent. *Newton v. Gulf Oil Corp.*, D.C.Pa.1949, 87 F.Supp. 210, affirmed 180 F.2d 491, certiorari denied 71 S.Ct. 42, 340 U.S. 814, 95 L.Ed. 598.

Under this section providing that any seaman, who has signed an agreement and is afterward discharged before commencement of voyage or before one month's wages are earned without fault on his part justifying such discharge and without his consent, shall be entitled to receive, in addition to any wages he may have earned, a sum equal in amount to one month's wages as compensation, etc., recovery may be had for such additional month's wages, though seaman had earned at least one month's wages prior to wrongful discharge and vessel had never left the harbor. *Bagley v. U. S.*, D.C.Cal.1948, 77 F.Supp. 260.

Fault on part of shipowner or master is not an element in liability under this section for payment to seamen of additional month's wages upon discharge of seamen before they have earned a month's wages without fault on their part and without their consent. *Newman v. U. S.*, D.C.N.Y.1943, 50 F.Supp. 66.

Member of crew becomes "trespasser" if he does not unqualifiedly obey master's command to leave vessel, regardless of whether dismissal may ultimately be proved to have been unwarranted, until such proof is offered in manner that law provides and member is lawfully reinstated. *The Losmar*, D.C.Md.1937, 20 F.Supp. 887.

The power to "discharge," that is to dismiss or get rid of, his crew as and when he sees fit is inherent in master of vessel. *Id.*

This section did not provide a penalty but merely fixed seaman's recovery where contract of employment is breached without his fault. *Arwine v. Alaska S. S. Co.*, 1987, 65 P.2d 695, 189 Wash. 437.

4. Seamen within section

Section 574 of this title providing that master of any vessel of burden of over

fifty tons bound from Atlantic or Pacific port must make an agreement in writing with every seaman on board declaring voyage or term at time for which seaman shall be shipped, and this section allowing seaman discharged before commencement of voyage to recover one month's wages as compensation, were inapplicable to seaman employed on vessel engaged in trade on Great Lakes. *Hariman v. Midland S. S. Line, Inc.*, C.A.N.Y.1953, 208 F.2d 564.

Members of crew of vessel, who worked under contract providing that they were not guaranteed salaries or disbursements for their time and labor, and under which their compensation was to be specified percentage of proceeds from fish caught on fishing trip for which they signed, were not merchant "seamen" entitled to seamen's wages under this section authorizing a seaman discharged without his fault before commencement of voyage or before one month's wages are earned to recover compensation therein specified. *Sigurjonsson v. Trans-American Traders*, C.A.Fla.1951, 188 F.2d 760, certiorari denied 72 S.Ct. 46, 342 U.S. 831, 96 L.Ed. 629, rehearing denied 72 S.Ct. 105, 342 U.S. 874, 96 L.Ed. 657.

Section 593 of this title respecting termination of wages by loss of vessel and this section respecting right to wages in case of improper discharge, where applicable, embrace all seamen suing for wages in the United States ports though vessel is registered under laws of a foreign country. *Avgoustis v. Efiri Shipping Co.*, C.A.N.Y.1949, 177 F.2d 461.

This section by reason of section 544 of this title was inapplicable to fishermen who entered into oral agreement for fishing venture on lay plan, requiring division of proceeds of catch between ship owner and crew. *Old Point Fish Co. v. Haywood*, C.C.A.Va.1940, 109 F.2d 703.

This section is not applicable to a seaman taken from the vessel to a hospital because of injuries, but not discharged, nor is it a defense that he had violated the shipping articles, which would have warranted his discharge. *Manhattan Canning Co. v. Wilson*, Wash.1914, 217 F. 41, 133 C.C.A. 322.

By analogy to this section a court of admiralty may, when equitable, award a seaman wrongfully discharged an additional month's wages, although he served more than a month, and is not therefore within the terms of the section. *Caffyn v. Peabody*, D.C.Wash.1906, 149 F. 294.

Note 4

Seaman who was not discharged before having earned one month's wages so as to be within this section, but who sought one month's unearned wages as damages for alleged illegal discharge, could not proceed in rem, but only in personam, since he had no lien against the ship for such unearned wages. *The Golden Kauri*, D.C.La.1939, 28 F.Supp. 288.

5. Acts constituting discharge

The termination of employment of a seaman, when the boat was taken into custody by a United States marshal on a monition and subsequently sold by him, was a "discharge," within this section, and section 596 of this title, allowing a discharged seaman two days' pay for every day during which payment is delayed. *The Great Canton*, D.C.N.Y.1924, 299 F. 953.

Libellant, who had signed shipping articles as assistant engineer, was told before the voyage commenced by the chief engineer, who had no authority to discharge him, that he was discharged to make room for another, and left the vessel, but before she sailed was notified that he was not discharged, and directed to report for duty, which he refused to do, he was not discharged, and was not entitled to recover a month's wages, under this section. *Hughes v. Southern Pac. Co.*, D.C.N.Y.1918, 274 F. 876.

Where the captain, who has authority under section 564 of this title, to hire and discharge seamen, wrongfully discharges men without taking them before the shipping commissioner, as required by section, the discharge, though illegal, is not void but releases the men from their obligations to the vessel, and entitles them to recover the penalty for wrongful discharge prescribed by this section. *The Inland*, D.C.N.Y.1921, 271 F. 1008, affirmed 279 F. 1018.

Where at a port which was not the port of final discharge the men were not requested to continue on the voyage under the articles but were requested to sign new articles for a new voyage, which they refused to do, the vessel by its own conduct fixed the status of the men with relation to the proceeding before the court, and they were entitled to their wages and transportation to the port from which they sailed, if they so desired. *Jenkins v. U. S. Emergency Fleet Corp.*, D.C.Wash.1920, 268 F. 870.

Where libellants signed as seamen for a voyage on a vessel then ready to sail from the port of Philadelphia, but detained by ice; the shipping articles con-

taining a provision that they should make no claim for wages or provisions while the vessel was so detained; they went on board, and were furnished light work and given their provisions for a few days, and were then sent on shore by the master, but were told to be in readiness to come back whenever the vessel should be able to get away and when that time came, a week later, they either could not be found or refused to go, they were not discharged, and were not entitled to wages for the time they were on board, nor to extra pay, under this section, as upon a wrongful discharge. *The Joseph B. Thomas*, Pa.1906, 148 F. 762, 78 C.C.A. 428.

Facts constituted a discharge. *The Jefferson Borden*, D.C.Del.1881, 6 F. 301.

Where seamen signed shipping articles describing vessel as bound from named American port to specific foreign port and such other ports as master might direct, and back to a final port of discharge in United States, for term not exceeding 12 months, but ship proceeded to an American port and returned to another American port where cargo was discharged and seamen were signed off and were paid wages 14 days after signing articles, such seamen were "discharged" within this section authorizing recovery of a month's wages if seaman is discharged without fault on his part before earning a month's wages, notwithstanding operator of vessel offered them continued employment under same articles. *Oeschler v. U. S. Nav. Co.*, D.C.Pa.1952, 106 F.Supp. 992.

Where seamen signed for a voyage from New York to Venezuela and return for a term not exceeding three months, but, after vessel proceeded only coastwise and voyage lasted less than two weeks, seamen signed off and refused to sign on for another coastwise voyage on the same vessel, there was an "improper discharge" authorizing recovery under this section of a month's wages, notwithstanding the certain tenure of employment within the National Labor Relations Act, section 151 et seq. of Title 29, continued. *Newton v. Gulf Oil Corp.*, D.C.Pa.1949, 87 F.Supp. 210, affirmed 180 F.2d 491, certiorari denied 71 S.Ct. 42, 340 U.S. 814, 95 L.Ed. 598.

Words which might imply a discharge, when spoken in anger, where seaman is ordered next day to do his duty, do not amount to a discharge. *Babbell v. Gardner*, D.C.S.C.1796, Fed.Cas.No.692.

6. Commencement of voyage

Where seamen, who signed for a voyage, were discharged without their con-

sent or fault, not having served a month and the voyage not having commenced, this section, which entitles them, when so discharged "before the commencement of the voyage," to an additional month's wages, applies, though the voyage was abandoned. *Brown v. U. S.*, D.C.Cal. 1922, 283 F. 425.

When a vessel with all her cargo aboard left her dock to be towed to a buoy in the bay for temporary mooring, her voyage "commenced." *Manhattan Canning Co. v. Wilson*, Wash.1914, 217 F. 41, 133 C.C.A. 322.

7. Persons liable

Shipping articles, signed by master and members of crew of ship in shipping commissioner's presence, as required by section 564 et seq. of this title, constitute employment contract and bind, not only master individually, but ship which he commands and owner thereof, to pay seamen's wages, and owner, as well as master, is liable for seaman's wrongful discharge. *Aird v. Weyerhaeuser S. S. Co.*, C.A.Pa.1948, 169 F.2d 606, certiorari denied 69 S.Ct. 1521, 337 U.S. 959, 93 L. Ed. 1758.

There are two kinds of "charter parties," those by which use of vessel is given by its owner to another without full possession and control thereof, and "demise charters", under which charterer is given sole possession and control of vessel for voyage or service contemplated, and only demise charterer becomes owner of vessel *pro hac vice* and liable for seamen's wages. *Id.*

Where shipowner, after declaration of unlimited national emergency and notwithstanding notice that ship was likely to be requisitioned by Navy for immediate use, signed on crew, shipowner assumed risk of requisition which followed and was obligated to pay seamen a month's wages upon their discharge. *Newman v. United Fruit Co.*, C.C.A.N.Y. 1944, 141 F.2d 191, certiorari denied 65 S.Ct. 37, 323 U.S. 711, 89 L.Ed. 572.

This section affords a remedy only for breach of contract by master or owner of vessel. *Hopkins v. Moore-McCormack Lines*, 1940, 22 N.Y.S.2d 72, 175 Misc. 109, affirmed 28 N.Y.S.2d 710, 262 App.Div. 722. See, also, *Lucadou v. U. S.*, D.C.N.Y.1951, 98 F.Supp. 946.

The former United States Shipping Board Emergency Fleet Corporation, operating a ship apparently owned by another, was not liable to seaman discharged without fault on his part under this section, in the absence of evidence as to its ownership of or its legal rela-

tion to the ship, or its connection with the United States Navy Department, authorized to seize vessels. *Burns v. U. S. Shipping Board Emergency Fleet Corporation*, 1921, 189 N.Y.S. 287.

The "master" of a ship, within this section, providing that a seaman discharged without fault on his part shall be entitled to penalty from the "master or owner," refers to the captain of the ship. *Id.*

8. Coastwise trade

This section, under section 544 of this title, does not apply to vessels engaged in the coastwise trade between Pacific ports in the states and ports in Alaska. *Wilson v. Manhattan Canning Co.*, D.C. Wash.1913, 205 F. 996.

This section, providing that seamen unjustly discharged before a month's service shall be entitled to recover a month's wages in addition to the wages earned, does not apply to seamen in the coastwise trade not signed before a shipping commissioner. *The George B. Ferguson*, D.C.Me.1905, 140 F. 955.

This section has been repealed as to vessels engaged in coastwise trade. *Dary v. The Caroline Miller*, D.C.Ala.1888, 36 F. 507.

Where seaman was employed as second cook by articles signed at Texas City, Tex., for a voyage from there to Halifax, Nova Scotia, and such other ports and places coastwise as the master might direct, and back to a final port of discharge in the United States, and after vessel arrived at Halifax the Neutrality Act was passed by Congress, and owner of vessel sold it to a foreign company, and voyage was terminated, and seaman was transported from Halifax to New York and paid off there, this section dealing with the right to wages in case of improper discharge, did not apply because of section 544 of this title dealing with vessels in coastwise trade which expressly excepts such type of voyage from the provision of this section and hence seaman was not entitled to an additional month's wages and transportation to Texas City, Tex. *Johnson v. Standard Oil Co. of New Jersey*, D.C. Md.1940, 33 F.Supp. 982.

9. Justification for discharge—Generally

In seamen's action for additional wages because of wrongful discharge, shipowner has burden of proving occurrence of event which made performance impossible. *Newman v. United Fruit Co.*, C.C.A.N.Y.1944, 141 F.2d 191, certiorari denied 65 S.Ct. 37, 323 U.S. 711, 89 L.Ed. 572.

Note 9

Where seamen libeling a vessel under the provisions of this section have shown the contract of shipping, their discharge having not only been shown, but admitted, and the libelants having for their part shown that their discharge was without their fault and against their consent, the burden is cast on the claimant to show that they were in fault and were discharged for good cause. *The Villa Y Herman*, D.C.Ala.1900, 101 F. 132.

The master is not ordinarily justified in dissolving the contract with a seaman and discharging him for a single fault, unless it is of a highly aggravated character. *Id.*

A seaman discharged before earning one month's wages must show that he was improperly or wrongfully discharged in order to recover one month's additional wages under this section. *Sergeant v. The O. M. Bernuth*, D.C.Tex.1954, 122 F. Supp. 589, affirmed 217 F.2d 704.

The master may discharge seamen at the inception of the voyage where they are quarrelsome and intend mischief. *The George Burnham*, D.C.Me.1872, Fed. Cas.No.5,331.

10. — Particular cases

Where seamen signed for voyage from New York to foreign port and return for term not exceeding three months, but vessel proceeded coastwise on voyage lasting less than two weeks after which seamen were signed off, and seamen then refused to sign on for another coastwise voyage on the same vessel to provide a term almost identical to that covered by the original articles, there was an "improper discharge" under this section authorizing recovery of a month's wages. *Newton v. Gulf Oil Corp.*, C.A. Pa.1950, 180 F.2d 491, certiorari denied 71 S.Ct. 42, 340 U.S. 814, 95 L.Ed. 598.

Where seamen had not only refused to perform their duties because of a disagreement over the interpretation of contract of employment but had also engaged in the strike as a protest against governmental action of which they did not approve, the master had power to discharge them. *Korthinos v. The Niarchos*, C.A.Va.1949, 175 F.2d 730, rehearing denied 175 F.2d 734, certiorari denied 70 S.Ct. 241, 244, 338 U.S. 894, 94 L.Ed. 550, rehearing denied 70 S.Ct. 345, 339 U.S. 934, 94 L.Ed. 579.

Disobedience by crew members of a lawful order given by both master and managing owner of vessel to such members in a foreign port directing them to return to vessel was good cause for their discharge. *Fiamengo v. The San*

Francisco, C.A.Cal.1949, 172 F.2d 767, certiorari denied 69 S.Ct. 1503, 337 U.S. 946, 93 L.Ed. 1748.

Where shipowner signed on crew on day ship was formally requisitioned by Navy for immediate use, and made no showing that at time of requisition it was too late to stop engagement of crew, shipowner did not discharge burden of showing that requisition was an excuse for breach of employment contract and was obligated to pay seamen a month's wages upon their discharge. *Newman v. United Fruit Co.*, C.C.A.N.Y. 1944, 141 F.2d 191, certiorari denied 65 S.Ct. 37, 323 U.S. 711, 89 L.Ed. 572.

Discharge of cook on ship could not be effected for any little infraction of discipline. *Trent v. Gulf Pacific Lines*, D.C.Tex.1930, 42 F.2d 903.

Where libelant was employed as a cook, and served as such for several days, and was then discharged, the fact that he was not a satisfactory cook and that he spoke disparagingly of the master prevented recovery under this section. *The S. J. Wilder*, D.C.Ala.1921, 234 F. 728, affirmed 234 F. 729.

Houston, Texas, being a Gulf of Mexico port, is not a port on east coast of United States, within seamen's shipping articles calling for voyage from San Francisco to ports on such coast via Pacific Coast, Mexican, Gulf of Mexico, and other ports, so that seamen's discharge at Houston before earning month's wages was improper and wrongful as prior to completion of voyage and they were entitled to additional month's wages under this section. *Sergeant v. The O. M. Bernuth*, D.C.Tex.1954, 122 F.Supp. 589, affirmed 217 F.2d 704.

Seamen discharged at Houston, Texas, before earning month's wages under shipping articles providing for tramp voyage from San Francisco to ports on east coast of United States, either directly or via Pacific Coast, Mexican, Gulf of Mexico, Caribbean, Panama Canal, Atlantic Coast or Hawaiian ports in any order at Master's option, were improperly and wrongfully discharged before completion of voyage contracted for, so as to entitle them to additional month's wages under this section. *Id.*

Where ship owner discovered discrepancy in master's accounts in foreign country, master made no attempt to explain, and employment was at will, owner could discharge master and retain his vacation bonus to apply against shortage without becoming liable for wages or subsistence on theory of wrongful discharge. *Higbee v. American For-*

sign S. S. Corp., D.C.Pa.1951, 94 F.Supp. 921.

Irregular manner in which seaman left vessel when it was about to proceed into Pacific war zone and other seamen were deserting, justified steamship company in refusing to re-employ him after discharge from hospital, though he was actually ill and in need of hospital treatment when he left vessel. *Miller v. U. S.*, D.C.N.Y.1943, 51 F.Supp. 924.

Where seamen signed articles for voyage to Norway on defendant's vessel which sailed from New York port on April 7, 1940, under American flag, and on April 10 President issued proclamation declaring Norway within a "combat area" pursuant to Neutrality Act, section 441 et seq., of Title 22, Foreign Relations and Intercourse, and defendant ordered vessel to return to New York where seamen were discharged before having earned one month's wages, in determining defendant's liability to seamen for a month's wages, defendant was not under a duty to seamen to examine into question of law whether regulations of Department of State forbidding vessel under President's proclamation to proceed to Norway exceeded authority conferred on executive branch of government by Neutrality Act. *Hopkins v. Moore-McCormack Lines*, 1940, 22 N.Y.S.2d 72, 175 Misc. 109, affirmed 23 N.Y.S.2d 710, 262 App.Div. 722.

Where seamen signed articles for voyage to Norway on defendant's vessel which sailed from New York port on April 7, 1940, under American flag, and on April 10 President issued a proclamation declaring Norway within a "combat area" pursuant to Neutrality Act, section 441 et seq., of Title 22, Foreign Relations and Intercourse, under which proclamation vessel could have proceeded at its own risk, and under regulation of Department of State issued November 10, 1939, vessel could not proceed into Norwegian waters, defendant's act in ordering vessel to return to New York where seamen were discharged before having earned a month's wages was not a breach of contract authorizing seamen to recover a month's wages under this section, even though regulations of department, making proclamation applicable to ships which had already cleared port, transcended scope of Neutrality Act. *Id.*

11. Failure of voyage

In action brought against vessel owner by libellant who had signed on board vessel for a fishing trip, judgment for libellants was not justified under evidence on ground that vessel's owner

wrongfully abandoned fishing enterprise, so as to entitle libellants to recover either quantum meruit as at common law, or within admiralty rule that a contract of employment will be enforced in behalf of seamen, notwithstanding failure of voyage, when failure is occasioned by wrongful act of master or owner. *Sigurdsson v. Trans-American Traders, C.A. Fla.*1951, 188 F.2d 760, certiorari denied 72 S.Ct. 46, 342 U.S. 831, 96 L.Ed. 629, rehearing denied 72 S.Ct. 105, 342 U.S. 874, 96 L.Ed. 657.

This section applies where the vessel was known to the owner to be wholly unfit for the voyage, and in a smooth sea, in pleasant weather, proved so unseaworthy that it could not proceed, and was compelled to return in a state of wreck. *The Staghound and the Gamecock*, D.C.Or.1899, 97 F. 973.

Where seamen were improperly discharged because of premature termination of voyage before one month's wages were earned, they were entitled only to the wages earned plus one month's wages and were not entitled to statutory penalties. *Newton v. Gulf Oil Corp.*, D.C.Pa.1949, 87 F.Supp. 210, affirmed 180 F.2d 491, certiorari denied 71 S.Ct. 42, 340 U.S. 814, 95 L.Ed. 598.

Steamship crew members, who had not earned month's wages at time of their discharge because of breaking up of ship's voyage as result of her unseaworthy condition, were entitled to month's wages as compensation. *The Louise*, D.C.Md.1943, 54 F.Supp. 157.

12. Monthly employment

In the absence of proof of usage or custom of the port, a captain employed on a scow at a certain rate of wages per month for an indefinite term may be discharged at any time, either during or at the end of the month, without previous notice, and may recover wages only for the time actually served. *Razukas v. New York Trap Rock Co.*, D.C.N.J.1918, 252 F. 311.

In the absence of usage to the contrary, seamen employed on a tug by the month are, in case of discharge during the middle of the month, entitled to a full month's wages. *Moore v. Neafe*, D.C.N.Y.1880, 3 F. 650.

A hiring at monthly wages imports that the engagement is by the month, and the seaman loses the month's wages where he quits, and recovers the whole wages where he is discharged, before its expiration. *The Hudson*, D.C.N.Y.1846, Fed.Cas.No.8,831.

Note 13

13. Waiver or release

Where seamen, discharged without their consent or fault before commencement of the voyage, who were entitled under this section, to an additional month's wages, were compelled to sign such a release to obtain payment of the wages admittedly due them, the release would be set aside and not bar their recovery in view of sections 597 and 644 of this title. *Brown v. U. S.*, D.C.Cal. 1922, 283 F. 425.

A release in full signed by a seaman on his wrongful discharge is not binding on him where it was not voluntarily given, but was required by the vessel owners, and he was at the time of his discharge in Alaska, at a place where he could not obtain legal redress and without money, and received no more than the amount of wages admittedly due him. *Caffyn v. Peabody*, D.C.Wash. 1906, 149 F. 294.

The right of a seaman to recover a month's extra wages under this section is waived by his acceptance of a new employment obtained for him by the owner, which is equivalent to the one from which he was discharged. *The John R. Bergen*, D.C.N.Y. 1903, 122 F. 98.

Where vessel, soon after starting on a voyage, became so disabled in a storm as to be unable to proceed, and jettisoned a portion of her cargo, and returned to the port of departure for repairs, where the master discharged the crew, and paid them their wages for the time served and the men protested that they were entitled to a month's pay, but without compulsion accepted the money tendered, and signed a full release in the presence of the shipping commissioner, they were bound by such release, and could not maintain a suit against the vessel for additional wages. *The Charles D. Lane*, D.C.Wash. 1901, 106 F. 746.

Seamen who signed release of employer for wages before commencement of voyage under protest which was noted in the release, were not barred from recovering month's wages where seamen were forced to sign release in order to collect pay they did receive. *Arwine v. Alaska S. S. Co.*, 1937, 65 P.2d 695, 189 Wash. 437.

14. Lien for wages

Extra pay and penalties for delay in paying seamen's wages are recoverable as wages, and rank with wages as prior lien. *Feldman v. American Palestine Line*, D.C.N.Y. 1926, 25 F.2d 1002.

There is no maritime lien in favor of the crew for wages after a vessel has

been placed in the custody of the law, except for the extra month's wages authorized by this section. *The Astoria*, C.C.A. Canal Zone 1922, 281 F. 618.

Except in the cases provided for in this section, where shipping articles have been signed, and a seaman is thereafter unwarrantably discharged by the master, there can be no lien as for wages unless services have in fact been rendered. *The Glenesslin*, D.C.Or. 1899, 96 F. 768.

A seaman engaged for a voyage, but not signed, or shipped, has no lien for wages or for expenses incurred. *Id.*

Discharged master could not claim seaman's lien for wages. *Crain v. American Waterways Corp.*, D.C.Pa. 1956, 143 F. Supp. 256.

Where services have not in fact been rendered by seaman he can have no lien as for wages unless he is within this section where seaman is improperly discharged before one month's wages are earned. *The Golden Kauri*, D.C.La. 1939, 28 F.Supp. 288.

15. Wages not recoverable

Where seamen sign shipping articles providing for voyage from Los Angeles to westward point in Pacific Ocean pursuant to wartime presidential order, and vessel goes to Pearl Harbor and returns to Los Angeles in 17 days, seamen who then quit are not entitled to 30 days' pay under this section, on ground that articles provide for foreign voyage which is breached by vessel's return to Los Angeles though vessel's logbook states that voyage is foreign, though seamen are required to submit to inoculations usually required for a Pacific foreign voyage, and though articles provide for bonus for service west of the 180th meridian. *Simmons v. Tankers Co.*, C.A.Cal. 1952, 199 F.2d 552.

Where members of crew of vessel were signed on to work during fishing trip for share in proceeds of catch of fish, and vessel sailed on fishing voyage off coast of New York state, but returned because of bad weather, and vessel subsequently sailed for Florida coastal waters, where weather and fish were expected to be better, to continue fishing venture, the run to Florida was not an ordinary coasting voyage for which crew members would be entitled to wages as merchant seamen, but was simply a move from one fishing ground to another in furtherance of fishing enterprise. *Sigurdsson v. Trans-American Traders, C.A. Fla.* 1951, 188 F.2d 760, certiorari denied 72 S.Ct. 46, 342 U.S. 831, 96 L.Ed. 629, re-

hearing denied 72 S.Ct. 105, 342 U.S. 874, 96 L.Ed. 657.

Where Greek seamen, claiming that ship was unseaworthy, while represented by an attorney, were paid their earned wages, received their seaman's books and were discharged by mutual consent under supervision of the Greek Vice Consul, this section respecting recovery of wages and penalties on discharge of crew on account of unseaworthiness and discharge of a seaman before commencement of voyage without fault on his part were inapplicable. *Loucopantis v. The Olympos*, C.A.Va.1949, 177 F.2d 785.

Where voyage was interrupted due to perils of the sea the master was entitled to discharge the crew and pay them wages only up to the date of discharge and the seamen were not entitled to claim 30 days additional wages beyond period of their service and penalty for nonpayment of such additional wages. *Avgoustis v. Erini Shipping Co.*, C.A.N.Y. 1949, 177 F.2d 461.

Captain of fishing boat with limited authority was not entitled to recover on employment contract as for discharge after resignation on employer's refusal to discharge engineer. *Andrus v. Alaska Pacific Salmon Corporation*, D.C.Wash. 1931, 46 F.2d 567.

Where the captain of a ship who discharged a seaman four days after he had shipped, on the same day revoked the discharge, but the seaman refused to report back to the ship, he is not entitled to an extra month's pay. *Jensen v. U. S.*, C.C.A.Va.1923, 287 F. 531.

Evidence did not sustain an allegation that seamen were forced to leave their ship and forbidden to return, but to show that they left voluntarily, without sufficient cause, and refused to return, by which, under British law, they forfeited their claims to wages. *Gerber v. Spencer*, C.C.A.Cal.1922, 278 F. 886.

Seamen discharged before earning month's wages under shipping articles providing for voyage from San Francisco, California, to ports on east coast of United States and back to final port of discharge therein for time not exceeding six months, were not entitled to additional month's wages under this section on ground that their discharges within 15 or 20 days after voyage began were improper or wrongful. *Sergeant v. The O. M. Berauth*, D.C.Tex.1954, 122 F.Supp. 589, affirmed 217 F.2d 704.

Seamen's discharges at Houston, Texas, before earning month's wages under shipping articles providing for voyage from San Francisco, California, to ports

on east coast of United States and back to final port of discharge therein, were not improper or wrongful so as to entitle them to additional month's wages under this section, because of place of such discharges. *Id.*

Where seaman was wrongfully discharged from his ship, he was not entitled to bonus based on transit of areas of risk in view of the fact that exposure to such risk was a condition precedent for receiving a bonus. *Aird v. U. S.*, D.C.Pa. 1953, 116 F.Supp. 281.

Under this section seamen who had been improperly discharged within meaning of the section were not precluded from recovering month's wages by fact that they remained aboard ship for another voyage. *Neil v. Gulf Oil Corp.*, D. C.Pa.1951, 101 F.Supp. 847.

In proceeding brought by seamen to recover additional month's wages under this section, libellants failed to show that their discharge was improper, and therefore judgment would be for respondent. *Lucadou v. U. S.*, D.C.N.Y. 1951, 98 F.Supp. 946.

Where purser left ship in foreign port with personal belongings intending not to return and bearing letter to U. S. consul expressing master's willingness to settle wages through coast guard and suggesting that purser leave vessel and proceed to consul's office for guidance, and purser never reported but returned to United States by plane and wages to date purser left were returned as unclaimed after ship was paid off by the coast guard, purser could not assert deliberate refusal to pay and could not recover penalty nor transportation charges. *Grevovich v. Cosmopolitan Shipping Co.*, D.C.N.Y.1949, 84 F.Supp. 836.

Master or owner of vessel does not owe discharged seaman any wages under this section in addition to those actually earned unless and until seaman has proved in court hearing that he was improperly discharged. *The Losmar*, D. C.Md.1937, 20 F.Supp. 587.

This section was inapplicable, where seamen were discharged because vessels were libeled and receiver appointed and seamen were discharged over month after articles for voyage were signed. *The Pacific Hemlock*, D.C.Wash.1932, 3 F. Supp. 305.

Where seamen were shipped at Boston for a voyage "to port or ports in Hayti one or more times, or other West India ports, and back to port or ports in the United States on this or any other vessel, term not to exceed six months," and,

Note 16

upon their arrival at a port in Hayti they were boarded on shore at the owner's expense and brought home in another vessel, their wages and all other expenses being paid to the time of their arrival at Boston, they were not entitled to two months' extra wages as having been discharged abroad, for their discharge was at Boston. *Rogers v. Lewis*, D.C.Mass.1868, 1 Lowell 297, Fed.Cas.No. 12,014.

16. Wages recoverable

Seaman discharged without cause before one month's wages were earned was entitled only to wages earned plus one month's wages. *United States Steel Products Co. v. Adams*, La.1928, 48 S.Ct. 182, 275 U.S. 338, 72 L.Ed. 326.

Where contracts between foreign vessel and foreign seamen and settlements were made in this country, recovery of wages should not be limited to the last voyage and settlements upheld which involved violation of sections 596, 597 and 599 of this title relating to seamen's contracts. *Korthinos v. The Niarchos*, C.A. Va.1949, 175 F.2d 730, rehearing denied 175 F.2d 734, certiorari denied 70 S.Ct. 241, 244, 338 U.S. 894, 94 L.Ed. 550, rehearing denied 70 S.Ct. 345, 338 U.S. 939, 94 L.Ed. 579.

Where seaman who had been discharged without cause had been awarded and paid 40 days' wages under the direction of the port captain as the amount to which he was entitled under Greek law as applied to his contract, such determination appeared to be proper and would be affirmed. *Id.*

Where voyage was abandoned because of owner's financial difficulties compelling him to break contract employing crew, and not because it was taken into custody under libel for wages filed by crew members after learning that ship would not sail, crew members were entitled to damages of one month's wages. *Viavlanos v. The Cypress*, C.A.Md.1948, 171 F.2d 435, certiorari denied 69 S.Ct. 1163, 1171, 337 U.S. 924, 93 L.Ed. 1732.

Where parties to contract employing seamen contemplated payment of current rate of wage for work ashore and unusually high rate for extraordinary services at sea, in a lump sum for entire voyage, and voyage was unexpectedly abandoned, damages of crew for improper discharge would be computed at the rate customarily paid. *Id.*

Where cook was wrongfully discharged from ship, but was tendered wages which he refused, he could recover only wages earned and one month's addition-

al wages as compensation for wrongful discharge. *Trent v. Gulf Pacific Lines*, D.C.Tex.1930, 42 F.2d 903.

Seamen discharged for incompetence were entitled to recover wages and penalty for delay in payment, but not extra month's wages. *Swanson v. Torrey*, C. C.A.Va.1928, 25 F.2d 835.

It is seamen's duty to minimize damages on termination of employment, and court will closely scrutinize claims for living expenses. *The Trader*, D.C.S.C. 1926, 17 F.2d 623.

Deviation into a war zone is a breach of articles contemplating no such voyage and entitles a seaman to leave the ship and recover one month's wages as on a wrongful discharge. *The Kentra*, D.C. N.Y.1922, 286 F. 163.

Where the captain, who has authority under section 564 of this title, to hire and discharge seamen, wrongfully discharges men without taking them before the shipping commissioner, as required by section, the discharge, though illegal, is not void, but releases the men from their obligations to the vessel, and entitles them to recover the penalty for wrongful discharge prescribed by this section and section 596 of this title. *The Inland*, D.C.N.Y.1921, 271 F. 1008, affirmed 279 F. 1018.

Where seamen who had been discharged by the captain before the termination of the voyage took up with the shipping commissioner the matter whether they were entitled to the statutory penalty, and the commissioner determined the penalty should not be inflicted and attempted to work out a compromise by having the captain retain the men at full pay, the refusal of the men to accept the proposed compromise defeated their right to the penalty, or any other right except to receive wages if they consented to discharge before the commissioner. *Id.*

Seaman wrongfully discharged at a port of call was entitled to recover the cost of maintenance and passage home. *Alaska S. S. Co. v. Gilbert*, Wash.1916, 236 F. 715, 150 C.C.A. 47.

A seaman is entitled to recover wages for the time served, although discharged because of fault on his part. *The Sentinel*, D.C.N.Y.1907, 152 F. 564.

Seamen who have signed shipping articles for a foreign voyage on a steamship, and in pursuance of the articles have presented themselves for the service of the ship several times, and are finally discharged before the commencement of the voyage in consequence of an

accident to the steam pipe which renders their discharge proper, may recover compensation in rem under this section for the period of the voyage, not exceeding the one month specified in the section. *Clark v. The St. Paul*, D.C.N.Y. 1897, 77 F. 998.

Wages and damages on wrongful discharge are generally recoverable. *Natchez & N. O. Packet & Navigation Co. v. Price*, La.1896, 74 F. 845, 21 C.C.A. 145. See, also, *The Chinook*, D.C.Wash. 1915, 226 F. 354; *The Emma F. Angell*, D.C.Pa.1914, 217 F. 311; *The White Seal*, Alaska 1912, 194 F. 402, 114 C.C.A. 364; *The Abbie M. Deering*, D.C.Cal.1900, 105 F. 400; *The Leiderhorn*, D.C.Cal.1900, 99 F. 1001; *Waitshoar v. The Craigend*, D.C.Wash.1890, 42 F. 175; *The D. C. Fogel*, C.C.La.1890, 41 F. 154; *Dary v. The Caroline Miller*, D.C.Ala.1888, 36 F. 507; *The City of New Orleans*, C.C.La.1888, 33 F. 683; *The Heroe*, D.C.Del.1884, 21 F. 525; *The Wanderer*, C.C.La.1880, 20 F. 655; *The Frank C. Barker*, D.C.N.J. 1884, 19 F. 332; *Marsland v. The Yosemite*, D.C.N.Y.1883, 18 F. 331; *The Ocean Spray*, D.C.Or.1876, Fed.Cas.No.10,412; *The Mary Belle Roberts*, D.C.Cal.1875, Fed.Cas.No.9,200; *Jehner v. Philadelphia & B. R. Co.*, D.C.Pa.1874, Fed.Cas.No.7,255; *Hayes v. The J. L. Wickwire*, D.C.Pa.1870, Fed.Cas.No.6,262; *The Dolphin*, D.C.N.Y.1873, Fed.Cas.No.3,972; *Bates v. Seabury*, D.C.Mass.1853, Fed.Cas.No.1,104.

Mariners hired for a voyage, who, pursuant to the contract, presented themselves at the wharf where the boat lay, and offered their services, but without good reason were refused admission to the boat, may sue in rem in admiralty for their stipulated wages, the boat having prosecuted the voyage. *The Acorn*, D.C.Pa.1887, 32 F. 638.

Seaman wrongfully discharged from his vessel was entitled to basic wages and overtime from time of discharge until time he shipped again and was entitled to be found at rate of \$6 a day while ashore and the transportation cost back to his home port. *Aird v. U. S.*, D.C.Pa.1953, 116 F.Supp. 231.

In suit by seaman against vessel's charterer for wages for period between date he was discharged for illness with tuberculosis and end of voyage, evidence established that seaman acted in good faith in assuming that he was fit for

duty and in presenting himself for employment. *Ward v. American President Lines*, D.C.Cal.1951, 95 F.Supp. 609.

"Wages", as used in this section does not include subsistence. *Newman v. U. S.*, D.C.N.Y.1943, 50 F.Supp. 66.

Seamen discharged at the inception of the voyage because they are quarrelsome and intend mischief are entitled to demand wages only for the time they have actually served. *The George Burnham*, D.C.Me.1872, Fed.Cas.No.5,331.

Seamen who had signed articles for voyage on defendant's vessel and who were discharged before having earned one month's wages could recover a month's wages from defendant under this section only if seamen were wrongfully discharged. *Hopkins v. Moore-McCormack Lines*, 1940, 22 N.Y.S.2d 72, 175 Misc. 109, affirmed 28 N.Y.S.2d 710, 262 App.Div. 722.

17. Jurisdiction

The additional wages are in the nature of damages for breach of contract, and not a penalty or forfeiture, within section 1355 of Title 28, which vests in the courts of the United States exclusive jurisdiction of all suits for penalties or forfeitures incurred under its laws, and the state courts have jurisdiction of an action to recover such additional wages. *Calvin v. Huntley*, 1901, 59 N.E. 435, 178 Mass. 29.

18. Evidence

In action by seamen to recover a month's wages under this section, City Court of city of New York would take judicial notice that it would be highly dangerous to peace of the United States that a vessel flying an American flag enter waters of warring nations in view of section 441 et seq. of Title 22. *Hopkins v. Moore-McCormack Lines*, City Ct.1940, 22 N.Y.S.2d 72, 175 Misc. 109, affirmed 28 N.Y.S.2d 710, 262 App.Div. 722.

19. Interest

Where seaman brought action against steamship operators for wrongful discharge, and case was in litigation for over ten years, and operators recently admitted the wrongful discharge, seaman was entitled to interest at rate of 4 per cent from date of admission. *Aird v. U. S.*, D.C.Pa.1953, 116 F.Supp. 231.

§ 595. Conduct as affecting right

No seaman or apprentice shall be entitled to wages for any period during which he unlawfully refuses or neglects to work when required, after the time fixed by the agreement for him to begin work, nor, unless the court hearing the case otherwise directs, for any period during which he is lawfully imprisoned for any offense committed by him. R.S. § 4528.

Historical Note

Derivation. Act June 7, 1872, c. 322, § 34, 17 Stat. 269.

Cross References

Application of section to sail or steam vessels engaged in coastwise trade, see section 544 of this title.

Seamen in coastwise trade, etc., to receive wages under this and enumerated sections, see section 563 of this title.

Notes of Decisions

Desertion 7

Disobedience or refusal to work 2

Illness 3

Imprisonment 4

Intoxication 6

Negligent absence 5

Refusal to work 2

Seamen under section 1

represent loss sustained by their refusal to work before destination of ship was known. *Id.*

Where a cook was put off duty in consequence of negligence, disobedience, and insolence, he has no right to wages for the period during which he performed no duty. *The Antioch*, D.C.Cal. 1880, 11 F. 165.

Seamen will not be allowed wages upon days when they wrongfully refuse to work or obey orders. *The Jefferson Borden*, D.C.Del.1881, 6 F. 301.

Evidence showed that five dissatisfied sailors and cook of auxiliary schooner yacht voluntarily terminated their employment and thereby relinquished any claim to compensation from time they refused to turn to and also to transportation to city from which they had commenced voyage, and hence they could not maintain libel to recover for wages, transportation, subsistence, and damages. *The Marie Anna*, D.C.N.Y.1941, 36 F.Supp.

1. Seamen under section

"Seaman" does not include a deck-hand on a barge whose duty it is to clean and load the same and who is employed under an ordinary contract of hiring. *The J. P. Schuh*, D.C.Ala.1915, 223 F. 455.

2. Disobedience or refusal to work

In suits by seamen to recover additional wages due under articles "in the event vessel lays up in any Atlantic Coast port for any reason for which the crew is not responsible," evidence indicating that master of vessel paid crew off when crew refused to furnish steam for unloading because of sympathy with pickets authorized denial of recovery, on ground that crew members were at fault. *The San Angelo*, C.C.A.Pa.1933, 99 F.2d 331.

Seamen's refusal to work before destination of ship was known or final port of discharge reached was without justification subjecting them to legal forfeitures and penalties. *The Sonderborg*, C.C.A.Va.1931, 47 F.2d 723, certiorari denied 52 S.Ct. 7, 284 U.S. 613, 76 L.Ed. 527.

Master was not justified in charging seaman with arbitrary amount claimed to

3. Illness

Where a seaman laid off from work for five days in port on account of illness, although the surgeon refused to give him a certificate, and he made no complaint on that ground to the captain, and was logged and fined, and a copy of the log entry was given him, he cannot recover wages for the time without proof that he was in fact too ill to work. *The St. Louis*, D.C.N.Y.1905, 137 F. 972.

A seaman who left vessel before end of voyage because he needed treatment of a venereal disease contracted before his

employment was not entitled to wages to end of voyage or to his fare to vessel's home port. *Austin v. U. S.*, D.C. Mass.1950, 91 F.Supp. 720.

A seaman, during illness occasioned by his own fault, is not entitled to wages, and is liable for the expenses of his subsistence; but not for the wages paid another man in his place. *Johnson v. Huckins*, D.C.Mass.1843, Fed.Cas.No.7,390.

4. Imprisonment.

Where seamen were imprisoned in a foreign jail by order of the American consul, and there was no evidence of bad faith, the men must pay the charges of the imprisonment and the expense of substitutes, but not the charges of the consul. *Chester v. Benner*, D.C.Mass. 1871, Fed.Cas.No.2,660.

A seaman cannot recover wages during the time that he was imprisoned by local authorities in the home port on a charge of mutiny. *Thomas v. Gray*, D. C.N.Y.1836, Fed.Cas.No.13,898.

Imprisonment may be deemed an adequate punishment, and prevent a subtraction of prior wages. *Id.*

Going ashore against orders to apply to a consul for alleged cruel treatment will not justify imprisonment of seamen, nor deduction from their wages of the amount paid other hands, in their places, while so imprisoned. *Hart v. The Otis*, D.C.Pa.1836, Fed.Cas.No.6,154.

A seaman rightfully imprisoned on shore for misconduct, but wrongfully left behind, may claim wages for the time he was imprisoned. *The Maria*, D. C.N.Y.1832, Fed.Cas.No.9,074.

Where a seaman is imprisoned in a foreign port for misbehavior, he does not necessarily forfeit the wages accruing during his confinement. *Wood v. Nimrod*, D.C.Pa.1829, Fed.Cas.No.17,959. See,

also, *Smith v. Treat*, D.C.Me.1845, Fed. Cas.No.13,117.

If the imprisonment of a seaman in a foreign port is improper, the expenses of it, or of the employment of a person in his stead, are not to be deducted from his wages. *Wilson v. The Mary*, D.C.Pa. 1828, Fed.Cas.No.17,823.

5. Negligent absence

Provision in shipping articles providing for payment of transportation from the final point of discharge of the seaman in the continental United States to the seaman's port of shipment did not apply to a crew member who was separated from his vessel abroad due to his own negligence. *Sellers v. U. S. Lines Co.*, D.C.Cal.1949, 89 F.Supp. 254.

6. Intoxication

Habitual drunkenness, if it goes to establish general incapacity to perform duty, is a ground of forfeiture of wages, otherwise it goes only to diminish compensation for the voyage. *Orne v. Townsend*, C.C.Mass.1827, 4 Mason 541, Fed. Cas.No.10,583.

Entries in the log book, showing that a seaman lost two days' work by intoxication and consequent illness, do not amount to satisfactory evidence of unlawful refusal or neglect to work when required, and a master is not justified in fining him twelve days' pay. 1898, 22 Op.Atty.Gen. 212.

7. Desertion

In seaman's suit for wages and other emoluments earned as member of steamship crew, evidence showed that crew, including libellant, voluntarily deserted ship without justification, so that he forfeited right to such wages and emoluments. *Flynn v. Waterman S. S. Corporation*, D.C.N.Y.1942, 44 F.Supp. 50.

§ 596. Time for payment

The master or owner of any vessel making coasting voyages shall pay to every seaman his wages within two days after the termination of the agreement under which he was shipped, or at the time such seaman is discharged, whichever first happens; and in case of vessels making foreign voyages, or from a port on the Atlantic to a port on the Pacific, or vice versa, within twenty-four hours after the cargo has been discharged, or within four days after the seaman has been discharged, whichever first happens; and in all cases the seaman shall be entitled to be paid at the time of his discharge on account of wages a sum equal to one-third part of the balance due him. Every

master or owner who refuses or neglects to make payment in the manner hereinbefore mentioned without sufficient cause shall pay to the seaman a sum equal to two days' pay for each and every day during which payment is delayed beyond the respective periods, which sum shall be recoverable as wages in any claim made before the court; but this section shall not apply to masters or owners of any vessel the seamen of which are entitled to share in the profits of the cruise or voyage. This section shall not apply to fishing or whaling vessels or yachts. R.S. § 4529; Dec. 21, 1898, c. 28, §§ 4, 26, 30 Stat. 756, 764; Mar. 4, 1915, c. 153, § 3, 38 Stat. 1164.

Historical Note

Derivation. Acts July 20, 1790, c. 29, § 6, 1 Stat. 133; June 7, 1872, c. 322, § 35, 17 Stat. 269.

Codification. R.S. § 4529, as enacted originally, provided that the masters or owners of vessels making voyages from Atlantic to Pacific ports, or vice versa, should pay to every seaman, his wages within two days after the termination of the agreement, or at the time of his discharge; that in case of vessels making foreign voyages the wages should be paid within three days after delivery of the cargo, or within five days after the seaman's discharge; that in all cases there should be paid at the time of the seaman's discharge one-fourth part of the balance due him; and that, in case

of neglect or refusal to so pay, the master or owner should be liable to pay the seaman a sum not exceeding the amount of two days' pay for each day, not exceeding ten, during which the payment should be delayed.

Act Dec. 21, 1898, amended R.S. § 4529 to read substantially as above except that the second sentence provided for payment of a sum equal to one day's pay for each day during which payment was delayed.

Act Mar. 4, 1915, substituted two days' pay for each day of the delay.

Exception. Application of and exceptions to Act Dec. 21, 1898, see note under section 569 of this title.

Cross References

Application of section to oyster vessels, see section 598 of this title.

Seamen in coastwise trade, etc., to receive wages as provided in first clause of this section, see section 563 of this title.

Notes of Decisions

I. GENERALLY 1-40

II. SUFFICIENT CAUSE FOR NONPAYMENT 41-80

III. PROCEDURE 81-89

Generally 1-40

Absence from ship 42

Amount generally, payment 6

Bonus pay 43

Burden of proof 85

Construction 1, 2

With other laws 2

Costs 89

Decree 87

Demand 43

Discharge 5

Disobedience 47

Doubtful rights 44

Evidence 86

Illness 46

Inability to pay 45

Injury or illness 46

Jurisdiction 82

Law governing 4

Liens 9

Neglect or disobedience 47

Nonpayment

Not warranted, particular cases 53

Warranted, particular cases 53

Overtime and bonus pay 43

Payment 6-8

Amount generally 6

Particular cases 8

Time generally 7

Persons liable 11

Pleading 84

Procedure 81-89

Purpose 3
Release 49
Review 88
Seamen within section 10
Sufficient cause for nonpayment 41-80
Tender of wages 50

Time
For bringing suit 83
Payment 7
Transportation costs 51
United States, liability of 12
Vessels within section 13

I. GENERALLY

Subdivision Index

Amount generally, payment 6
Construction 1, 2
 With other laws 2
Discharge 5
Law governing 4
Liens 9
Payment 6-8
 Amount generally 6
 Particular cases 8
 Time generally 7
Persons liable 11
Purpose 3
Seamen within section 10
Time generally, payment 7
United States, liability of 12
Vessels within section 13

1. Construction

This section providing for payment of wages to seamen after termination of their employment or after their discharge was designed to protect seamen, and must be liberally interpreted for their benefit. *Forster v. Oro Nav. Co.*, C.A.N.Y.1955, 228 F.2d 319.

This section providing for payment of seamen upon discharge within specified times must be liberally construed in favor of seamen. *Johnson v. Isbrandtsen Co.*, C.A.Pa.1951, 190 F.2d 991, affirmed 72 S.Ct. 1011, 343 U.S. 779, 96 L. Ed. 1294.

The section is penal and the right stricti juris. "Seamen are wards of the courts, no doubt, and are protected against their own carelessness. The statutes, especially the revision of 1915 [incorporated in part in this section], show an increased solicitude for their welfare, which courts have no right to view with jealousy. Still they remain in some measure persons sui juris, and there is neither justice nor policy in aiding them to catch at penalties, where they have suffered no wrongs." *Peterson v. U. S.*, D.C.N.Y.1921, 274 F. 1000.

This section, under which seaman made claim for wages and "waiting time", was a public policy statute and, therefore, would preclude any consideration of the

law of India, in which seaman's employment contract had been executed. *Samad v. The Etivebank*, D.C.Va.1955, 134 F. Supp. 530.

2. — With other laws

Section 597 of this title providing that when voyage is ended every seaman shall be entitled to remainder of wages which shall be then due him, as provided in this section, does not bestow benefits of this section providing penalty of double wages for neglect or refusal to pay wages on seaman who does not come within language of this section, and unless seaman can show that his wages are due as provided in this section, he cannot claim the double wage penalty. *Mahar v. Gartland S. S. Co.*, C.A.N.Y.1946, 154 F.2d 621.

This section and section 597 of this title, should be construed together in determining the wages due a seaman. *The Cubadist*, C.C.A.Ala.1919, 256 F. 203.

This section and section 597 of this title are mandatory and no exceptions other than those expressly provided for by other sections of this title may be allowed. *Keen v. U. S.*, D.C.N.Y.1951, 99 F.Supp. 633, affirmed 199 F.2d 151.

3. Purpose

This section and sections 597 and 599 of this title, providing that seamen on foreign vessels whose employment terminates in a United States port shall be paid in cash in hand their full wages minus only the deductions authorized by provisions of these sections, were designed to protect from overreaching a generally impecunious and improvident class of persons and to insure that seamen will not be turned ashore with little or nothing in their pockets. *Mavromatis v. United Greek Shipowners Corp.*, C.A.Me.1950, 179 F.2d 310.

This section was not intended to secure seamen benefits if claim is based on unreasonable conduct in connection with demand. *The Nancy*, D.C.Pa.1926, 11 F.2d 318.

This section was passed by Congress for protection of seamen to secure prompt payment of seamen's wages and thus protect them from harsh conse-

Note 3

quences of arbitrary and unscrupulous action of their employers. *Underwood v. Isbrandtsen Co.*, D.C.N.Y.1951, 100 F. Supp. 863.

The essential purpose of this section authorizing recovery of double wages by seamen whose wages are not paid without sufficient cause is to penalize. *Chambers v. Moore-McCormack Lines*, D.C.Pa.1949, 84 F.Supp. 1009, affirmed 182 F.2d 747. See, also, *Butler v. U. S. War Shipping Administration*, D.C.Pa.1946, 68 F.Supp. 441.

This section requiring payment of double wages as penalty for failure to pay wages of seamen within time fixed by this section is intended to apply where delay in payment of wages was willful or unreasonable. *The Herbert L. Rawd- ing*, D.C.S.C.1944, 55 F.Supp. 158.

The object of this section and sections 597 and 599, is to secure for seamen the payment of a definite sum, agreed upon in ordinary course of events, upon the termination of their service. *The Leonidas*, D.C.Md.1940, 32 F.Supp. 738, reversed on other grounds 116 F.2d 440.

4. Law governing

One year statute of limitations contained in Panama labor code for all actions and rights arising under labor code, with certain exceptions, was not specifically aimed at and did not qualify rights of seaman under Panama labor code to extra wages upon change of registry and rights concerning vacation, overtime and holiday pay, and therefore statute was not bar to seaman's suit brought in admiralty side of federal court of New York more than one year after he had been discharged to recover wages and penalties. *Bournias v. Atlantic Maritime Co.*, C.A.N.Y.1955, 220 F.2d 152.

The Consular Convention of 1902 entered into between the United States and the Kingdom of Greece was abrogated in 1916 so far as it conflicted with this section. *Heros v. Cockinos*, C.A.Va.1949, 177 F.2d 570.

Where crew members abandoned torpedoed Argentine vessel on captain's orders but volunteered to return to drifting derelict, whether captain's statement to men that they would lose their wages because they had brought salvage suit was repudiation of contract which justified the men in then leaving the vessel without any resultant forfeiture of wages was governed by Argentine law. *Usatorre v. The Victoria*, C.A.N.Y.1949, 172 F.2d 434.

Where crew members abandoned torpedoed Argentine vessel on captain's orders but volunteered to return to drifting derelict, whether captain's statement to men that they would lose their wages because they had brought salvage suit was repudiation of contract which justified the men in then leaving the vessel without any resultant forfeiture of wages was governed by Argentine law, and finding as to applicable Argentine law should be made on remand. *Id.*

Where seamen signed articles in Italy before British consul, the contract is governed by British law and not the La Follette Act of 1915, incorporated in part in this section. *The Hannington Court*, D.C.N.Y.1918, 252 F.211.

Law of forum is applicable to wage claims involving violations of American statutes by foreign-owned vessels, but this is the extent of the forum in maritime cases involving only a foreign seaman aboard a foreign vessel. *Samad v. The Etivebank*, D.C.Va.1955, 134 F.Supp. 530.

Law of the flag has no effect upon a claim for violation of this section which relates to seaman and which is expressly made applicable to foreign vessels in United States harbors. *Id.*

Where justifiably discharged members of crew of Greek vessel were tendered wages to date of their removal from vessel, but refused to accept them whereupon such wages of discharged men were deposited with Greek Consul in accordance with Greek law, they had no cause of action for such wages against American agent for Greek Government. *Mavromatis v. United Greek Ship Owners Corp.*, D.C.Me.1947, 70 F.Supp. 1005.

Where master of vessel was required by laws of Greece to collect taxes and old age pension contributions from seamen and to remit them to government through the Greek consul, master could legally make such deductions in paying Greek seamen at time of discharge in United States port. *Neapolidis v. Theofana Maritime Co.*, 1951, 63 S.E.2d 795, 192 Va. 36, certiorari denied 72 S.Ct. 36, 342 U.S. 831, 96 L.Ed. 629.

5. Discharge

In libel in admiralty by Greek seamen against master, owners and operating agents of Greek steamship for damages for false arrest, and unjustified discharge, wherein it appeared that seamen had been ordered by Greek Consul to leave ship and that they had been arrested upon order of Greek authorities upon their refusal to leave vessel, evi-

dence was insufficient to establish claims of false arrest or unjustified discharge. *Livanos v. Pateras*, C.A.Va.1951, 192 F.2d 319, certiorari denied 72 S.Ct. 1042, 343 U.S. 950, 96 L.Ed. 1352.

In libel in admiralty by Greek seamen against master, owners and operating agents of Greek steamship, for indemnities and bonuses under provision of Greek law making same payable if seamen are discharged without justifiable cause, evidence sustained finding that none of libellants could be classed as having been unlawfully discharged. *Id.*

Where assistant engineer was paid his earned wages in full when he left a ship in Japan after he was injured, he was then "discharged" within this section. *Page v. U. S.*, C.A.Or.1949, 177 F.2d 601.

Evidence required finding that seaman was not disabled, and that demand for immediate discharge after leaving port was unreasonable. *Morgan v. Eastern Transp. Co.*, D.C.Va.1928, 31 F.2d 327, affirmed 31 F.2d 332.

Where immigrant inspector ordered minor alien seamen, who failed to pay for permit to work on coastwise vessels, to ship on vessels bound for foreign ports, master of ship on which they worked must give them discharge and pay. *Mystic S. S. Co. v. Stromland*, C.A.Va.1927, 20 F.2d 342, rehearing denied 21 F.2d 607, certiorari denied 48 S.Ct. 213, 276 U.S. 618, 72 L.Ed. 734.

Seamen, who on expiration of term prior to end of voyage went ashore, after demanding their pay and informing the master that they would no longer be responsible for the safety of the ship, but who thereafter agreed to an extension of the articles and went back on board, and on end of voyage received full pay and a bonus of a month's pay, and signed a release of the ship under section 644 of this title which was not set aside for good cause under section 597 of this title, was not discharged, under this section. *Peterson v. U. S.*, D.C.N.Y.1921, 274 F. 1000.

In action by discharged seaman against vessel owner and operator for seaman's alleged wrongful discharge and for master's neglect to pay seaman his earned wages at time of discharge, evidence established that seaman's discharge was wrongful. *Forster v. Oro Nav. Co.*, D.C.N.Y.1954, 128 F.Supp. 113, affirmed 228 F.2d 319.

Consular certificate of discharge was only prima facie evidence of reason for seaman's discharge and of fact, if true, that discharge was proper. *Id.*

Where a Roumanian seaman on a Roumanian ship, though he had repeatedly requested his discharge, and had been suspended for misconduct, had never actually been discharged because the necessary authorization had not been received from the Roumanian authorities, and because, under American law, he could not be paid off except for the purpose of reshipping, the relationship created by the contract of employment continued until the ship ceased to fly the Roumanian flag, and at that time the seaman became entitled to his discharge under American law. *The Prahova*, D.C.Cal.1941, 38 F.Supp. 418.

A seaman who was signed for a voyage from Baltimore to Pacific Coast ports and return, but was forced to leave ship on January 20 at San Francisco because of illness, was "discharged" on that date within this section, and full payment of all earned wages on that date established owner's performance of its statutory duty regardless of whether cause for seaman's leaving vessel entitled him to wages to end of voyage, and seaman could not recover double wages under this section. *Yoffe v. Calmar S. S. Corporation*, D.C.Cal.1938, 23 F.Supp. 629.

A delay beyond a reasonable time to unload the vessel may be regarded as equivalent to a discharge of the seamen; but the burden of showing the discharge in such case is on the seaman alleging it, and his own oath is not sufficient evidence. *The Eagle*, D.C.N.Y.1846, Fed.Cas.No.4,233.

An arrest and imprisonment under a criminal charge by the master was equivalent to a discharge, entitling seamen to their wages. *Hill v. The Triumph*, D.C.N.Y.1841, Fed.Cas.No.6,500.

There is no distinction, as to what is necessary to constitute the delivery of a cargo, where it is owned by a freighter, and where both ship and cargo belong to the same person. *The Martha*, D.C.N.Y.1830, 1 Blatchf. & H.Adm. 151, Fed.Cas.No.9,144.

6. Payment—Amount generally

Where the master, without sufficient cause, refused to pay seamen their wages, but thereafter the owner paid the wages in full, the owner is entitled to credit for such payment against the penalty of double wages imposed for the wrongful refusal to pay, under this section. *Vincent v. U. S.*, C.C.A.Cal.1921, 272 F. 889.

Under this section a seaman is entitled at once upon his discharge to one-third

Note 6

of the balance of the wages then owing to him, and not to a bonus equal to such an amount. *The Cubadist*, D.C.Ala.1918, 252 F. 658.

The number of days for which a ship-owner must pay the double wages rests in the discretion of the court and depends upon the equities of the particular case. *Spero v. The Argodon*, D.C. Va.1957, 150 F.Supp. 1. See, also, *Samad v. The Etivebank*, D.C.Va.1955, 134 F.Supp. 530; *Forster v. Oro Nav.*, D.C. N.Y.1954, 128 F.Supp. 113, affirmed 228 F.2d 319.

Payment of one month's wages to seaman under section 594 of this title in case of improper discharge is in the nature of compensation or liquidated damages for a breach of contract, and satisfies all liability for breach of contract by wrongful discharge, and seaman is not entitled to "two for one" penalty unless master or owner refuses or neglects to make payment of one month's wages in manner required by statute. *Newton v. Gulf Oil Corp.*, D.C. Pa.1949, 87 F.Supp. 210, affirmed 180 F. 2d 491, certiorari denied 71 S.Ct. 42, 340 U.S. 814, 95 L.Ed. 598.

Under this section relating to recovery of seamen's wages and penalties, court has discretionary power to limit the penalties. *The Victoria*, D.C.N.Y.1948, 76 F.Supp. 54, reversed on other grounds 172 F.2d 434.

7. — Time generally

The statutory requirement of prompt payment of wages arises on discharge of the seaman or discharge of the cargo, whichever occurs first. *Page v. U. S.*, C. A.Or.1949, 177 F.2d 601.

Right to allow penalty for withholding pay of seamen between dates of judgment and termination of appeal is matter within discretion of court, dependent on whether there was proper ground for appeal. *Mystic S. S. Co. v. Stromland*, C.C.A.Va.1927, 20 F.2d 342, rehearing denied 21 F.2d 697, certiorari denied 48 S. Ct. 213, 276 U.S. 618, 72 L.Ed. 734.

Construing this section with section 597 of this title, the words "within 24 hours after the cargo has been discharged" refer to discharge on completion of the voyage for which the seaman shipped. *The Cubadist*, C.C.A.Ala.1919, 256 F. 203, certiorari denied 39 S.Ct. 332, 249 U.S. 618, 63 L.Ed. 804.

Where the officers of a vessel are entitled to discharge a seaman at pleasure, they are bound to be ready to pay his wages at the time of his discharge and in

such case a demand of the officer who employed and discharged the seaman is sufficient. *Walsh v. The Louisiana*, D.C. N.Y.1880, 4 F. 751.

Ultimate payment of injured seaman's earned wages into court registry will stop running of the "waiting time" if payment includes the statutory penalties to date of payment, but a conditional or partial tender does not have such effect. *Samad v. The Etivebank*, D.C.Va.1955, 134 F.Supp. 530.

Seaman was not required to look to collection of balance of wages at any place other than at time and place of discharge. *Kalantzis v. Mesar*, D.C.Va. 1955, 132 F.Supp. 745, affirmed 245 F.2d 705.

Under this section requiring owner of vessel making coasting voyages to pay seaman his wages within specified times, no exceptions other than exceptions provided by other sections of this chapter, can be allowed. *Johnson v. Isbrandtsen Co.*, D.C.Pa.1950, 91 F.Supp. 872, affirmed 190 F.2d 991, affirmed 72 S.Ct. 1011, 343 U.S. 779, 96 L.Ed. 1294.

This section operates in each case at the time seaman leaves the ship, either upon his discharge or at the end of voyage if no discharge has occurred before that time. *Yoffe v. Calmar S. S. Corporation*, D.C.Cal.1938, 23 F.Supp. 629.

Where seamen are discharged by the master upon the condemnation of the vessel and are returned home by him, they are entitled to wages up to the time of their discharge, and if withheld the owners are liable to the penalty provided by this section. *Gallagher v. Murray*, D. C.N.Y.1879, 10 Ben. 290, Fed.Cas.No.5,193.

A mariner is entitled to his wages as soon as he is voluntarily discharged from the vessel, and if not paid within ten days after his discharge he may have process from a court of admiralty against the vessel to enforce payment. *The Mary*, D.C.Me.1838, Fed.Cas.No.9-191.

The wages are not payable until the expiration of the period allowed for collecting the freight. *Swift v. The Happy Return*, D.C.Pa.1799, Fed.Cas.No.13,697.

Fifteen days may be allowed for the discharge of the cargo and payment of wages. *Edwards v. The Susan*, D.C.Pa. 1795, Fed.Cas.No.4,299. See, also, *The Martha*, D.C.N.Y.1830, Fed.Cas.No.9,144.

8. — Particular cases

Where it did not appear when cargo was discharged in foreign port, time

within which master could pay wages due and thereby avoid liability for double wages was four days from vessel's arrival at such port. *McCrea v. U. S.*, N.Y.1935, 55 S.Ct. 291, 294 U.S. 23, 79 L.Ed. 735, reargument denied 55 S.Ct. 443, 294 U.S. 332, 79 L.Ed. 933.

Where payment of wages due fireman on foreign voyage was precluded by his own conduct, he was not entitled to recover double wages for time that intervened after the suit was brought. *Id.*

Where seaman was engaged on month-to-month basis for coastwise yacht voyage and signed no articles on coming aboard, there was assumption that he was obligated to serve for fixed period of a month, and upon his becoming incapacitated while on board, he was entitled to wages for such period only, and where seaman left yacht 27th day of month and was cured 31st day, he was entitled to wages until 31st day of month, in addition to maintenance and cure. *Rofer v. Head & Head, Inc.*, C.A.Fla. 1955, 226 F.2d 927.

Where court erroneously determined on April 8, 1947, that deduction on account of compulsory savings of Greek seamen employed on Greek ship was lawful, but through no fault of counsel for shipowner final decree was not entered until January 22, 1949, penalty for unlawful deduction should not run after original decision, even though erroneous, since deduction could not be said to be arbitrary thereafter. *Mavromatis v. United Greek Shipowners Corp.*, C.A. Ma.1950, 179 F.2d 310.

Where Greek seamen were continuously employed on Greek vessel in making three voyages and were discharged during third voyage, penalty for failure to pay wages without deduction for compulsory savings began to run on fifth day after discharge. *Id.*

Where assistant engineer after injuries was paid his earned wages in full when he left the ship in Japan statutory requirement of prompt payment of wages was met by prompt payment of the earned wages in Japan and failure to pay promptly subsequently accrued wages at the conclusion of the ship's voyage would not justify the exaction of double wages. *Page v. U. S.*, C.A.Or. 1949, 177 F.2d 601.

Where contracts between foreign vessel and foreign seamen and settlements were made in this country, recovery of wages should not be limited to the last voyage and settlements upheld which involved violation of this section and sections 594 and 595 of this title relating

to seamen's contracts. *Korthinos v. The Niarchos*, C.A.Va.1949, 175 F.2d 730, rehearing denied 175 F.2d 734, certiorari denied 70 S.Ct. 241, 338 U.S. 894, 94 L. Ed. 650, rehearing denied 70 S.Ct. 345, 339 U.S. 934, 94 L.Ed. 579.

Voyage was completed when cargo was discharged at final port of discharge, relieving vessel of obligation to further employ seamen. *The Velma L. Hamlin*, C.C.A.Va.1930, 40 F.2d 852.

Seamen, awarded wages by District Court decree, could recover double wages from date of decree until payment. *Swanson v. Torrey*, C.C.A.Va.1928, 25 F.2d 835.

Seaman denied half pay immediately when demanded, was not entitled, after abandoning ship, to full pay to date of refusal and double pay to date of payment. *The Nancy*, D.C.Pa.1926, 11 F.2d 313.

Seamen who received their wages but two days after they demanded them, could not complain of delay in making payment. *Elman v. Moller*, C.C.A.Va. 1926, 11 F.2d 55, certiorari denied 46 S. Ct. 488, 271 U.S. 675, 70 L.Ed. 1145.

Where one-thirtieth of the amount of the monthly wage of the seamen was taken as the basis for ascertaining the daily wage, and award of double pay made for each day that payment was withheld without sufficient cause, method of computation was proper. *Gerber v. Spencer*, C.C.A.N.Y.1922, 278 F. 886.

Under shipping articles for a voyage from Boston to a Cuban port, and such other West Indian or Gulf of Mexico ports as the master might direct, and back to a final port of discharge, north of Hatteras, for a term not exceeding six calendar months, the voyage includes such trips, within the articles, as may be made within the six months, and the seamen are not entitled to payment of full wages within that time, unless the vessel makes a United States port north of Hatteras. *The Cubadist*, C.C.A.Ala. 1919, 256 F. 203, certiorari denied 39 S. Ct. 392, 249 U.S. 618, 63 L.Ed. 804.

A contract providing that a seaman's wages should not be payable until a stated time, although his term of service might sooner terminate, was void as in violation of this section and the withholding of payment in reliance on such provision to subject the shipowner to the penalty prescribed by such section. *The City of Montgomery*, D.C.N.Y.1913, 210 F. 673.

A seaman who libeled a vessel for his wages after she arrived in port thereby

Note 8

elected to consider his engagement at an end, and could not recover for the time during which he continued to remain on board thereafter, except the 10 days' extra pay formerly provided by this section. *The Chas. L. Baylis*, D.C.N.Y.1885, 25 F. 862.

Where, for 30 day period, seaman's physical condition would preclude any efforts to effect payment of wages due him at the time of injury, allowance of double wages would be made from date about a month after injury to day before case was heard. *Samad v. The Etivebank*, D.C.Va.1955, 134 F.Supp. 530.

Where, although seaman was entitled to wages at time and place of discharge, employer's delay in making payment under insurance agreement until seaman arrived at different city did not, under circumstances, result in double liability, equal delay in making bonus payment, although also unjustified, did not impose double liability for wages. *Kalantzis v. Mesar*, D.C.Va.1955, 132 F.Supp. 745, affirmed 245 F.2d 705.

Where seaman had been wrongfully discharged in foreign port, he was entitled to wages until end of voyage less any wages he earned or could have earned. *Forster v. Oro Nav. Co.*, D.C.N.Y.1954, 128 F.Supp. 113, affirmed 228 F.2d 319.

Tender, which was made to discharged seaman of wages earned after running of time within which wages are to be paid to avoid penalty, and which did not include sum for penalty wages due under this section, was not sufficient. *Id.*

Where chief engineer of respondent's vessel was paid his full wages to date of his discharge, engineer had nothing more coming except a claim for wages he might have earned from date of his discharge to end of voyage or until he obtained employment and refusal to pay subsequent accrued wages at conclusion of voyage did not justify exaction of double wages from respondent. *Underwood v. Isbrandtsen Co.*, D.C.N.Y.1951, 100 F.Supp. 863.

A seaman, who left vessel during evening on which he was off duty and the following morning obtained from ship's master a hospital certificate and was justifiably refused re-employment after discharge from hospital, was entitled to wages up to day following first departure from ship, on which day he was also supposed to be off duty, but not thereafter. *Miller v. U. S.*, D.C.N.Y. 1943, 51 F.Supp. 924.

Seamen were entitled to full wages to date when receiver was appointed for vessels and to 40 per cent. of wages thereafter until discharge, where they performed services in maintaining vessel to such date. *The Pacific Hemlock*, D.C.Wash.1932, 3 F.Supp. 305.

Time given beyond 15 days for unloading, where it appeared that the vessel could not be unloaded within such time. *Thompson v. The Philadelphia*, D. C.Pa.1805, Fed.Cas.No.13,973.

Where jury found against undisputed evidence that tug owner withheld \$18 wages without sufficient cause, but found in employer's favor regarding \$33.39 wages, court setting verdict aside improperly entered judgment based on wrongful withholding of \$33.39 item. *Standard Dredging Co. v. Barnalla*, 1932, 163 S.E. 367, 153 Va. 367.

Where a vessel is chartered for a voyage to be made from Portland to sea and proceed to one or more ports in the West Indies, and from thence to Portland, the seamen's wages are due at the port of destination in the West Indies, though the payment of the charter money was expressly made to depend on the safe arrival of the vessel in Portland, to which place she never returned, being lost while lying at her outward port. *Blanchard v. Bucknam*, 1824, 3 Me. 1, 3 Greenl. 1.

9. Liens

These provisions read in connection with R.S. § 4536, repealed, protect seamen's wages from seizure on execution or attachment. *Wilder v. Inter-Island Steam Nav. Co.*, Hawaii 1908, 29 S.Ct. 58, 211 U.S. 239, 53 L.Ed. 164, 15 Ann.Cas. 127.

If a seaman performs services on a vessel of a nature that would usually entitle him to a lien under the general admiralty law for wages, that he is improperly designated as a master or captain will not deprive him of the lien. *Burdine v. Walden*, C.C.A.Fla.1937, 91 F. 2d 321.

The master of a vessel is not entitled to a lien under the general admiralty law for his wages. *Id.*

Extra pay and penalties for delay in paying seamen's wages are recoverable as wages, and rank with wages as prior lien. *Feldman v. American Palestine Line*, D.C.N.Y.1926, 25 F.2d 1002.

Seamen have lien on vessel for penalties for delayed payment of wages. *The Chester*, D.C.Md.1928, 25 F.2d 908.

Double wages under this section for delay in paying seamen's wages were not "penalty," but incident of actual wages, and protected by maritime lien. The *Trader*, D.C.S.C.1926, 17 F.2d 623.

Under this section both wages and penalties for delay in payment are a lien on the vessel prior to the claims of other creditors, and financial difficulties of the owner do not change the rule. The *Nika*, D.C.Wash.1923, 287 F. 717.

The penalty for delay in paying wages of merchant seamen, imposed by this section, was intended to compensate the seamen for the delay in securing payment, and is an incident to their claim of wages proper, protected by the lien for the wages. *Gerber v. Spencer*, C.C.A.Cal.1922, 278 F. 886.

The extra pay provided by this section is an incident to the claim for wages, and ranks with the claim for wages as a prior lien. The *Chas. L. Baylis*, D.C. N.Y.1885, 25 F. 862.

10. Seamen within section

This section, requiring that upon discharge of seaman in port of the United States his full wages shall be paid to him and imposing penalty of double wages for delay in payment, applies to foreign seaman serving on a foreign vessel. The *Fletero v. Arias*, C.A.Va.1953, 206 F.2d 267, certiorari denied 74 S.Ct. 220, 346 U.S. 897, 98 L.Ed. 398.

Members of crew of vessel, who worked under contract providing that they were not guaranteed salaries or disbursements for their time and labor, and under which their compensation was to be specified percentage of proceeds from fish caught on fishing trip for which they signed, were not merchant "seamen" entitled to recover penalties imposed by this section imposing penalties for delay in payment of wages of seamen. *Sigurjonsson v. Trans-American Traders*, C.A.Fla.1951, 188 F.2d 760, certiorari denied 72 S.Ct. 46, 342 U.S. 831, 96 L.Ed. 629, rehearing denied 72 S.Ct. 105, 342 U.S. 874, 96 L.Ed. 657.

A seaman employed on vessel engaged in trade on Great Lakes was not entitled, under this section, to double wages for each day of delay in payment of wages earned, since provisions of this section for double wages for delay are not applicable to vessels engaged in lake-going trade. *Mahar v. Gartland S. S. Co.*, C.C.A.N.Y.1946, 154 F.2d 621.

This section is applicable to foreign seamen on foreign vessel. The *Sonderborg*, C.C.A.Va.1931, 47 F.2d 723, certio-

rari denied 52 S.Ct. 7, 284 U.S. 618, 76 L.Ed. 527. See, also, *The M. V. Buchanan*, D.C.N.Y.1942, 47 F.Supp. 597.

The provision of this section, which entitles seamen to a sum equal to two days' pay for each day's delay in payment of wages after discharge, beyond the time therein fixed, was not applicable to foreign vessels, which are governed as to the rights of their seamen by the laws of their respective countries, to be proved as facts in a suit in an admiralty court of the United States. The *City of Norwich*, D.C.N.Y.1921, 273 F. 304.

Certificated seamen employed as oilers by City of New York aboard sludge vessel which carried waste from sewage disposal plants to dumping ground were eligible as "seamen" to sue under this section and section 597 of this title, and their rights were governed thereby rather than by local law, though they had not signed shipping articles and were civil service employees, boarding and living at home, and were paid and received other benefits as city employees. *Dendrinis v. City of New York*, D.C.N.Y.1949, 86 F.Supp. 638.

A seaman employed on vessel engaged in trade on Great Lakes was not entitled, under this section, to double wages for each day of delay in payment of wages earned, since provisions of this section are not applicable to vessels engaged in lake-going trade but was entitled only to agreed wage for the time employed with interest thereon. *Mahar v. Gartland S. S. Co.*, D.C.N.Y.1945, 62 F.Supp. 158.

A master of a vessel is not a "seaman" within this section. *Brinkman v. Erie & St. Lawrence Corporation*, 1944, 46 N.Y.S.2d 615, 182 Misc. 1045.

This section providing that master and owner who neglects to pay seaman without sufficient cause shall be liable for double pay applies to seamen on foreign vessels while in harbors of the United States who sue for wages upon termination of voyage. *Neapolidis v. Theofana Maritime Co.*, Va.1951, 63 S.E.2d 795, 192 Va. 90, certiorari denied 72 S.Ct. 36, 342 U.S. 831, 96 L.Ed. 629.

11. Persons liable

Where master of a vessel failed to pay a seaman his earned wages, after termination of his employment, without sufficient cause, his neglect became that of the owner of the vessel so that either was liable for such wages. *Forster v. Oro Nav. Co.*, C.A.N.Y.1955, 228 F.2d 319.

Note 11

The local policy restrictions which require contracts of a municipality to be made by a municipal agent authorized by local law to make the contract will be upheld in admiralty as well as in civil suits, and municipality will not be held liable to seaman employed by it for payment of overtime compensation unless contract to pay such compensation has been made by municipal agent with proper authority. *Sorensen v. City of New York*, C.A.N.Y.1953, 202 F.2d 857, certiorari denied 74 S.Ct. 674, 347 U.S. 951, 98 L.Ed. 1087.

Where United States was owner of the ship involved and a private concern the general agent for the transaction of certain shoreside business under terms of standard form agency agreement, the general agent was not liable to a member of the crew for double wages because pay was allegedly withheld without sufficient cause. *Page v. U. S.*, C.A. Or.1949, 177 F.2d 601.

A claim by seamen for penalties under this section for nonpayment of wages will not be allowed against a fund resulting from a sale of the vessel and which belongs solely to a mortgagee and lienholders. *The Moshulu*, D.C.Cal.1921, 276 F. 35.

"In the present case neither the master nor the owner has any interest in the fund now in the registry of the court resulting from the sale of the vessel. To allow the penalties would be to transfer the burden thereof from the master and owner to the lienholders and the mortgagee. This I do not believe was ever contemplated, or intended, by Congress in enacting the statute in question." *Id.*

In seaman's action, under this section, for double salary for period which he was compelled to wait for wages due him, evidence raised a factual question as to which defendant was actual owner of bark. *Lonnberg v. Knox*, 1924, 204 N.Y.S. 852, 123 Misc. 148.

12. United States, Liability of

This section does not authorize recovery of double wages against United States as owner of merchant vessel, since section provides for "penalty" not assented to by government. *The American Shipper*, C.C.A.N.Y.1934, 70 F.2d 632, affirmed 55 S.Ct. 291, 294 U.S. 23, 79 L.Ed. 735, reargument denied 55 S.Ct. 443, 294 U.S. 382, 79 L.Ed. 933.

The government is not liable to a penalty under this section. *Corrigan v. U. S.*, D.C.N.Y.1923, 298 F. 610.

"The government can be held liable for a penalty only when the statute fixing the penalty expressly so provides." *Id.*

Seaman was not entitled to penalties provided for in this section for failure of United States as owner and operator of vessel to pay seaman's wages within the time specified by this section since such penalties are not recoverable against the United States. *Keen v. U. S.*, D.C.N.Y. 1951, 99 F.Supp. 653, affirmed 199 F.2d 151.

The inability of Argentine vessel to continue its return voyage to Argentina after acquisition by United States did not deprive crew members of the right to bring an action to recover wages in federal District Court under an agreement made or renewed in the United States. *Usatorre v. Compania Argentina Navegacion Mihanovich, Ltda.*, D.C. N.Y.1945, 64 F.Supp. 370, reversed on other grounds 172 F.2d 434.

A seaman in a libel to recover unpaid wages is not entitled to recover double wages against the United States. *Leahy v. U. S.*, D.C.N.Y.1945, 63 F.Supp. 11.

The statutory penalty of double wages for failure to pay seaman's wages could not be recovered from the United States. *Dasher v. U. S.*, D.C.N.Y.1945, 59 F.Supp. 742.

The former United States Shipping Board Emergency Fleet Corporation was an "owner" of a vessel operated by it through an agent. *Cox v. Lykes*, 1924, 143 N.E. 226, 237 N.Y. 376.

13. Vessels within section

Seamen were not entitled to penalty for delay in payment of wages for services rendered on motor vessel while it was engaged only in harbor work in and about the harbor of St. Louis, Missouri, since vessel was not engaged in "coastwise trade between Atlantic and Pacific Coasts" within this section making penalty for delay in payment of wages inapplicable to vessels engaged in coastwise trade except between such coasts. *Cotter v. The Lucinda Clark*, D.C.Mo. 1950, 94 F.Supp. 284.

II. SUFFICIENT CAUSE FOR NON-PAYMENT

Subdivision Index

Generally	41
Absence from ship	43
Bonus pay	43
Demand	43
Disobedience	43

Doubtful rights	44
Illness	46
Inability to pay	45
Injury or illness	46
Neglect or disobedience	47
Nonpayment	
Not warranted, particular cases	52
Warranted, particular cases	53
Overtime and bonus pay	48
Release	49
Tender of wages	50
Transportation costs	51

41. Generally

Only such deductions and set-offs for derelictions in performance of seaman's duties as are recognized in this chapter shall be allowed against his wages, and collection of other claims against seaman must be sought through other means. *Isbrandtsen Co. v. Johnson*, Pa.1952, 72 S.Ct. 1011, 343 U.S. 779, 96 L.Ed. 1294.

Seaman on foreign voyage is not entitled to double wages for master's failure "without sufficient cause" to make timely payment of wages due unless failure to pay is in some sense arbitrary, willful, or unreasonable. *McCrea v. U. S.*, N. Y.1935, 55 S.Ct. 291, 294 U.S. 23, 79 L.Ed. 735, reargument denied 55 S.Ct. 443, 294 U.S. 382, 79 L.Ed. 933.

"The phrase 'without sufficient cause' must be taken to embrace something more than valid defenses to the claim for wages. Otherwise, it would have added nothing to the statute. In determining what other causes are sufficient, the phrase is to be interpreted in the light of the evident purpose of the section to secure prompt payment of seamen's wages, H.R.Rep.1657, Committee on the Merchant Marine and Fisheries, 55th Cong., 2d Sess., and thus to protect them from the harsh consequences of arbitrary and unscrupulous action of their employers, to which, as a class, they are peculiarly exposed." *Collie v. Ferguson*, Va.1930, 50 S.Ct. 189, 281 U.S. 52, 74 L.Ed. 696.

The words "refuses or neglects to make payment * * * without sufficient cause" connote, either conduct which is in some sense arbitrary or willful, or at least a failure not attributable to impossibility of payment. We think the use of this language indicates a purpose to protect seamen from delayed payments of wages by the imposition of a liability which is not exclusively compensatory, but designed to prevent, by its coercive effect, arbitrary refusals to pay wages, and to induce prompt payment when payment is possible. Hence

we conclude that the liability is not imposed regardless of the fault of the master or owner, or his retention of any interest in the vessel from which payment could be made. *Id.*

A controversy as to balance of wages due seaman who is discharged while vessel is in port of the United States may justify delay in payment of such wages and thus avoid penalty imposed by this section for delay in payment. *The Fletero v. Arias*, C.A.Va.1953, 206 F. 2d 267, certiorari denied 74 S.Ct. 220, 346 U.S. 597, 98 L.Ed. 393.

Under this section authorizing recovery of double wages by seaman whose wages are not paid without "sufficient cause", quoted phrase embraces more than valid defenses to claim for wages and mere fact that wages may be withheld for eight offenses listed does not demonstrate that any other withholding is without sufficient cause. *Chambers v. Moore McCormack Lines*, C.A.Pa.1950, 182 F.2d 747.

Where no question as to advances was raised in libels originally filed, after the question was raised the representatives of the owners were entitled to reasonable time to investigate the circumstances, and delay which had occurred with respect to such portion of the wages was not a failure to pay "without sufficient cause" within this section providing for double wages. *Korthinos v. The Niarchos*, C.A.Va.1949, 175 F.2d 730, rehearing denied 175 F.2d 734, certiorari denied 70 S.Ct. 241, 244, 338 U.S. 894, 94 L. Ed. 550, rehearing denied 70 S.Ct. 345, 339 U.S. 934, 94 L.Ed. 579.

"Sufficient cause" need not amount to a valid legal defense to the claim for wages. *Bender v. Waterman S. S. Corp.*, C.C.A.Va.1948, 166 F.2d 423.

"Sufficient cause" for failure of master or vessel owner to make payment of wages to seaman within two days after termination of agreement or at time of seaman's discharge includes a reason for nonpayment asserted in good faith even though it may ultimately be held not to be a good defense. *Id.*

Under this section providing for penalty if master refuses to pay seamen's wages "without sufficient cause," it is not every refusal which grounds penalty, but it is only arbitrary, unwarranted and unjust conduct which is sought to be penalized. *Glandzis v. Callinicos*, C.C.A.N.Y.1944, 140 F.2d 111. See, also, *Butler v. U. S. War Shipping Administration*, D.C.Pa.1946, 68 F.Supp. 441.

Note 41

In order for a seaman to recover for waiting time, it must appear that the refusal or neglect to pay his wages was "without sufficient cause." *Gold v. Matson Nav. Co.*, C.C.A.Cal.1934, 73 F.2d 808. See, also, *Butler v. U. S. War Shipping Administration*, D.C.Pa.1946, 68 F. Supp. 441.

A shipowner withholding payment because a condition unlawfully imposed on payment is not fulfilled is liable for penalty for delay. *The Lake Gaither*, C.C.A. Va.1930, 40 F.2d 31.

Even though there is not sufficient legal defense to claim for actual wages, liability for double wages will not arise if owner or master had sufficient cause to withhold wages when demanded beyond time mentioned in the section. *The Trader*, D.C.S.C.1926, 17 F.2d 623.

Absence of reasonable cause is essential to the right to a penalty under this section. *Corrigan v. U. S.*, D.C.N.Y.1923, 298 F. 610.

A master cannot be subjected to the penalty provided for in this section where he has not had a reasonable opportunity to comply with the demand of a seaman for half wages under section 597 of this title. *The Tairoa*, C.C.A.N.Y. 1924, 297 F. 449.

Under this section it is only in cases where the refusal to make payment is willful, and without justification or excuse, that double pay should be given. *The Cubadist*, D.C.Ala.1918, 252 F. 653.

An arbitrary, willful, or unreasonable refusal to pay to discharged seaman earned wages is a "refusal without sufficient cause" within this section, imposing penalty for such refusal. *Forster v. Oro Nav. Co.*, D.C.N.Y.1954, 128 F.Supp. 113, affirmed 228 F.2d 319.

Under this section, imposing penalty for refusal of vessel owner and operator to pay earned wages to discharged seaman within certain time, liability is incurred unless the refusal to pay earned wages is for some reasonable degree morally justified. *Id.*

This section does not entitle seaman to recover double wages for delay which was not arbitrary, willful or unreasonable. *The Panama City*, D.C.Pa.1940, 35 F.Supp. 64.

To recover penalty under this section for refusal to pay seaman's wages, libellant must prove that captain was not only wrong, but acted arbitrarily and without reasonable cause, in failing to pay wages. *Gold v. Matson Nav. Co.*, D. Cal.1933, 5 F.Supp. 871.

Under this section providing that payment of a seaman's wages must be made within four days after discharge, and if owner or master of vessel refuses without sufficient cause to make such payment, then payment must be made to seaman of a sum equal to two days pay for each day during which payment is delayed, conduct in withholding pay must be arbitrary, high-handed, capricious, or unconscionable. *Rivera v. Isbrandtsen Co.*, 1952, 112 N.Y.S.2d 470, 202 Misc. 703.

Under this section providing for penalty if master refuses to pay seamen's wages "without sufficient cause," it is not every refusal which justifies penalty, but is only arbitrary, unwarranted and unjust conduct which is sought to be penalized. *Rush v. Isbrandtsen Co.*, Sup. 1949, 96 N.Y.S.2d 508.

Under this section providing that master or owner who neglects to pay seaman "without sufficient cause" shall be liable for double pay, quoted phrase does not include refusal to pay because of defense made and asserted in good faith though unsuccessfully. *Neapolidis v. Theofana Maritime Co.*, 1951, 63 S.E. 2d 795, 192 Va. 90, certiorari denied 72 S.Ct. 36, 342 U.S. 831, 96 L.Ed. 629.

42. Absence from ship

Evidence in seaman's suit for double wages was sufficient to sustain finding of District Court that seaman abandoned vessel two days after arrival in port and that sufficient cause existed for failure to pay his wages. *McCrea v. U. S.*, N.Y.1935, 55 S.Ct. 443, 294 U.S. 382, 79 L. Ed. 933.

Fireman entitled to discharge and payment of earned wages because of failure to divide firemen on foreign voyage into at least three watches was not entitled to double wages where he departed without leaving address before expiration of time allowed by this section for payment of wages, failed to keep appointment with master at consul's office, or to communicate again with master after consul's rejection of fireman's demands. *McCrea v. U. S.*, N.Y.1935, 55 S.Ct. 291, 294 U.S. 23, 79 L.Ed. 735, reargument denied 55 S.Ct. 443, 294 U.S. 382, 79 L.Ed. 933.

Where Greek ship arrived in United States port and seamen were paid off for the round voyage which had theretofore ended at a foreign port and on the following day demanded an immediate change of conditions on the ship and two days later the seamen were discharged from further service by mutual consent, claim that seamen were entitled to two

days' pay under this section for each day in the interval was without merit, since the delay in payment was not without sufficient cause. *Loucopantis v. The Olympos*, C.A.Va.1949, 177 F.2d 785.

Evidence justified denial of recovery by alien seamen for wages when they were logged as deserters, and for damages for failure to return their books, where immigration authorities would not consent to their discharge before completion of a round-trip voyage and on their failure to return to the ship after due notification master proceeded on his voyage and logged the seamen as deserters, and thereafter deposited their books at the first port of call and the balance of their wages with the proper foreign governmental officer. *Kofouros v. Giannoutsos*, C.A.Va.1949, 174 F.2d 477, rehearing denied 175 F.2d 734, certiorari denied 70 S.Ct. 239, 338 U.S. 894, 94 L.Ed. 550, rehearing denied 70 S.Ct. 344, 339 U.S. 939, 94 L.Ed. 579.

Where crew abandoned torpedoed Argentine vessel on captain's orders but volunteered to return to drifting derelict, and subsequently left vessel on being informed by captain that they would lose wages because they had brought salvage suit, because of lack of clarity of applicable legal rules the captain had sufficient cause to refuse payment of wages, and therefore it was error to award any penalty in libel for wages. *Usatorre v. The Victoria*, C.A.N.Y.1949, 172 F.2d 434.

Seamen who left ship in 1934 without being paid after master refused to satisfy their demands that master immediately settle West Coast strike of 15,000 longshoremen and seamen, pay 1929 shipping board wage scale, maintain three watches, pay overtime at rate of 60 cents per hour, provide more and better food, make no discrimination against any of crew, discharge no one, and recognize Marine Workers' Industrial Union, was not entitled to double wages. *Weisthoff v. American-Hawaiian S. Co.*, C.C.A.N.Y.1935, 79 F.2d 124, certiorari denied 58 S.Ct. 140, 296 U.S. 619, 80 L.Ed. 439.

Seaman, demanding wages, without sufficient cause or notice, and thereafter leaving vessel, may not complain if wages are withheld and deposited at earliest opportunity. *Morgan v. Eastern Transp. Co.*, D.C.Va.1928, 31 F.2d 327, affirmed 31 F.2d 332.

Deserting seamen, who were not logged as such, were entitled to recover wages, but not penalties for nonpayment. *Swanson v. Torrey*, C.C.A.Va.1923, 25 F.2d 835.

Failure to pay wages, where seamen intentionally missed vessel, hoping to delay sailing, was not ground for awarding additional pay. *Buchanan v. U. S.*, D.C.Cal.1923, 24 F.2d 523.

Seamen quitting vessel because of violation of section 673 of this title requiring division into watches was entitled to double pay on refusal of demand for earned wages. *Southern Pac. Co. v. Hair*, C.C.A.Tex.1923, 24 F.2d 94.

The fact that a seaman was absent without leave when the voyage terminated and other members of the crew were paid off was "sufficient cause" for not paying him immediately when he appeared the next day after the paymaster had gone, and he was not entitled, under this section, to double pay during the delay necessary to notify the owner and obtain the money. *The Lake Galewood*, D.C.Md.1927, 21 F.2d 987.

Seamen were entitled to penalty, where their discharge as "deserters" was unjustified. *The Ella Pierce Thurlow*, D.C.Va.1926, 13 F.2d 675.

A seaman who deserted the vessel prior to his demand for half wages under section 597 of this title, is not entitled to recover the penalty provided in this section. *The Tairoa*, C.C.A.N.Y.1924, 297 F. 449.

Where the shipping articles of seamen called for a voyage from San Francisco to Manila for a term not exceeding six months, the seamen were entitled to their discharge on the first arrival of the vessel at Manila, less than three months from her leaving San Francisco, and the refusal of discharge by the master was without fair ground of dispute, though the collector of customs at Manila wrote a letter stating that the master had rated the seamen as deserters, which his office confirmed, so that the seamen were entitled to double wages under this section. *Vincent v. U. S.*, C.C.A.Cal.1921, 272 F. 889.

This section was intended to secure justice, and not to penalize vessels for mere errors of judgment on the part of their masters, and should not be applied in a case where seamen left their ship on account of a matter as to which there was reasonable ground for controversy, which constituted sufficient cause for litigating their right to recover wages. *The Amazon*, D.C.Wash.1906, 144 F. 153.

Where libelants were hired as deck hands on a steamer making daily trips between New York and another port at \$30 per month, and after working six days left the service without the consent

Note 42

to the master, refusal of the owner to pay them wages for the time they worked did not subject him to the penalty imposed by this section; there being reasonable ground, at least, for the owner's claim that libelants' contract was one from month to month, and that they had no right to abandon the service before the end of the month. *The Express*, D.C.N.Y.1904, 129 F. 655.

Where steward on vessel was absent without leave at time set for sailing without giving any sufficient reason therefor, owner of vessel was justified in replacing steward and in lawfully deducting from his wages expenses incurred by vessel in hiring a substitute, and steward was not entitled to recover penalties for such withholding from his wages. *McAllister v. American Trading & Production Corp.*, D.C.Pa.1950, 89 F. Supp. 284.

Irrespective of whether there was sufficient cause for withholding seamen's wages, seaman who was absent when crew was paid off at termination of voyage, could not recover penalty for period from such time until he next appeared to protest before United States Shipping Commissioner. *Chambers v. Moore-McCormack Lines*, D.C.Pa.1949, 84 F.Supp. 1009, affirmed 182 F.2d 747.

Where purser left ship in foreign port with personal belongings intending not to return and bearing letter to U. S. consul expressing master's willingness to settle wages through coast guard and suggesting that purser leave vessel and proceed to consul's office for guidance, and purser never reported but returned to United States by plane and wages to date purser left were returned as unclaimed after ship was paid off by the coast guard, purser could not assert deliberate refusal to pay and could not recover penalty nor transportation charges. *Gregovich v. Cosmopolitan Shipping Co.*, D.C.N.Y.1949, 84 F.Supp. 886.

Where vessel waited 12 hours after sailing time for seamen to board vessel and then sailed without them and seamen had status of being absent without leave, although not actually deserters, seamen were not entitled to claim wages to end of voyage or damages for alleged wrongful discharge or damages for sailing with gear and papers of such seamen. *The Cripple Creek*, D.C.Pa.1943, 52 F.Supp. 710.

Where irregular manner in which seaman left vessel justified master in withholding earnings on suspicion that he was a deserter, seaman was not entitled to recover double wages, though seaman

actually left vessel to obtain needed hospital treatment. *Miller v. U. S.*, D.C. N.Y.1943, 51 F.Supp. 924.

A seaman, voluntarily deserting ship without justification, was not entitled to recover penalty under this section from ship owner for refusal to pay wages earned, where such refusal was justified. *Flynn v. Waterman S. S. Corporation*, D.C.N.Y.1942, 44 F.Supp. 50.

Fireman who demanded discharge for United States merchant vessel's failure to divide sailors into equal watches on foreign voyage, but was refused with request that he meet master at consulate, was not entitled to double pay from date of discharge where he failed to meet master but abandoned vessel. *The American Shipper*, D.C.N.Y.1932, 3 F.Supp. 184, affirmed 70 F.2d 632.

Where master of Greek vessel in United States port was required to go to city on ship's business on May 20th and when he returned in the evening three seamen had left ship, and efforts to locate them were unavailing, and one of the seamen left in violation of orders of Immigration Authorities, and seamen were discharged on that day and vessel sailed leaving sufficient funds to pay seamen's wages with ship's agent, and all seamen received wages on May 24th and May 29th as soon as they presented themselves for payment, master did not refuse or neglect to make payment "without sufficient cause" and did not incur penalty for double pay. *Neapolidis v. Theofana Maritime Co.*, 1951, 63 S.E.2d 795, 192 Va. 90, certiorari denied 72 S.Ct. 36, 342 U.S. 831, 96 L.Ed. 629.

Under this section providing that master or owner neglecting to pay seaman "without sufficient cause" shall be liable for double pay, refusal of master to pay to discharged seamen the amount of earned wages without deduction for advances on theory that advances last made could be applied to discharge claims for illegal advances made earlier was not "without sufficient cause." *Id.*

43. Demand

That Greek seamen employed on Greek ship made no demand for payment of unlawful deductions for compulsory savings prior to filing of libel did not disentitle them to statutory penalty. *Mavromatis v. United States Greek Ship-owners Corp.*, C.A.Me.1950, 179 F.2d 310.

Seaman, demanding immediate payment of wages and thereafter going ashore, was limited to wages deposited with shipping commissioner, where no demand was made before filing libel.

Morgan v. Eastern Transp. Co., D.C.Va. 1928, 31 F.2d 327, affirmed 31 F.2d 332.

That deposit of wages for seaman was by draft did not warrant recovery of additional wages and penalty, where no demand was made until filing libel. *Id.*

The fact that seamen are alleged to have demanded sums in excess of those due them, does not affect their rights under this section and section 597 of this title, where it appears that the shipowner did not dispute the amount of the claims and made no effort to meet them. *Gerber v. Spencer*, C.C.A.Cal.1922, 278 F. 886.

Claimants of a vessel were not prejudiced by the excessive demand of seamen for wages, where the amount demanded was not disputed by the owner of the vessel, which failed to take steps to meet the demand, and where the libel filed by the seamen correctly stated the wages due. *Id.*

Where the master, without any new agreement, undertakes a voyage other than that originally agreed upon, the seamen may demand their wages. *Weiberg v. The St. Oloff*, D.C.Pa.1790, Fed. Cas.No.17,357.

44. Doubtful rights

Penalty imposed by this section on shipowner for delay in paying seaman's wages without sufficient cause, is not incurred by delay because of an attempt to secure revision in federal Circuit Court of Appeals by an appeal from a decree for such wages and penalties for delay. *Pacific Mail S. S. Co. v. Schmidt*, Cal.1916, 36 S.Ct. 581, 241 U.S. 245, 60 L.Ed. 982.

Where delay in paying wages to seamen was result of litigation attributable as much to seamen as to their adversaries, the withholding was not "without sufficient cause" so as to entitle seamen to "waiting time". *Korthinos v. Niarchos*, C.A.Va.1950, 184 F.2d 716, certiorari denied 71 S.Ct. 612, 2 mems., 341 U.S. 905, 95 L.Ed. 1343.

Double wages cannot be recovered for failure to pay wages withheld in good faith under reasonable belief that same is not due. *The Velma L. Hamlin*, C.C.A.Va.1930, 40 F.2d 852.

Seamen paid at end of voyage, and signing releases after vessel was incapacitated by fire, could not recover double wages for neglect to make payment "without sufficient cause" for time of return voyage. *Id.*

Master, who acted reasonably in depositing seamen's wages with shipping

commissioner, was entitled to full release. *Morgan v. Eastern Transp. Co.*, D.C.Va.1928, 31 F.2d 327, affirmed 31 F.2d 332.

On master's refusal to pay seamen wages under honest misconstruction of shipping articles, penalty is not recoverable. *The Thomas Tracy*, C.C.A.N.Y.1928, 24 F.2d 372.

Where there was a doubtful legal question whether demand by seamen for discharge and wages before completion of the voyage was justified, refusal of the master to comply with the demand was not "without sufficient cause" though litigation was finally determined in their favor. *O'Hara v. Luckenbach S. S. Co.*, C.C.A.Cal.1926, 16 F.2d 681.

Where crew of government owned steamship, wrecked and sunk in Arabian Sea, were sent by American consul without their captain to New York on another vessel, and there denied full payment of wages on ground that they could produce no papers showing amounts due, delay pending ascertainment of amounts due, which finally necessitated cable to captain, was not ground for imposition of penalty under this section. *Villigas v. U. S.*, D.C.N.Y. 1922, 8 F.2d 300.

Where there was an actual controversy between seamen and the owner as to the owner's failure to furnish required food and as to the seamen's claim for extra compensation, the captain had the lawful right to have the questions adjudicated by the court, and his refusal to pay the sums demanded by all seamen was not a wrongful withholding of wages. *The Silver Shell*, D.C.N.Y.1918, 255 F. 340.

Where the seamen's claim for additional compensation for extra work and for compensation for insufficient food was submitted to the shipping commissioner of a port and decided in favor of the captain of the vessel, that in itself established captain was making a bona fide contention, and the seamen could not recover on the theory that the withholding of the amounts claimed was withholding of wages. *Id.*

Payment of wages of a seaman is not delayed "without sufficient cause" within this section, though the cause of the delay, a contention that an order of the seaman which had been paid was valid, was insufficient in law; "without sufficient cause" meaning "without reasonable cause." *The George W. Wells*, D. C.Mass.1902, 113 F. 761.

Note 44

On the discharge of a seaman, a dispute having arisen as the amount due him, the master went with him before a shipping commissioner, who decided in favor of the contention of the master, such decision, although erroneous, constituted a reasonably "sufficient cause" for withholding the additional wages claimed to exempt the ship and owners from the penalty imposed by this section. *The Alice B. Phillips*, D.C.N.Y. 1901, 106 F. 956.

Seaman was not entitled to penalty under this section for captain's refusal to pay wages because of seaman's refusal to sign shipping articles and American consul's ruling that seaman had no case. *Gold v. Matson Nav. Co.*, D.C. Cal.1933, 5 F.Supp. 971.

Master's doubt as to meaning of this section is not "sufficient cause," as required by this section, for delaying payment of seaman on United States merchant vessel making foreign voyage. *The American Shipper*, D.C.N.Y.1932, 3 F.Supp. 184, affirmed 70 F.2d 632.

Pending a judicial determination of the question, where a sentence of a court-martial imposing forfeiture of pay upon a seaman employed on a vessel owned by or chartered to the United States is regular on its face, it is the duty of the executive branch to comply with the sentence and to withhold the pay. 1944, Op.Atty.Gen. 324.

45. Inability to pay

Insolvency of owner and arrest of vessel was sufficient cause for nonpayment of seaman's wages, avoiding liability for double wages for waiting time. *Collie v. Fergusson*, Va.1930, 50 S.Ct. 189, 281 U.S. 52, 74 L.Ed. 696.

Steamer was not liable for double amount of wages due seamen discharged by subcharterer, where owner did not know that any wages were due, nor where seamen were, until they filed libel. *The A. I. Baker*, C.C.A.Ky.1935, 76 F.2d 871, certiorari denied 56 S.Ct. 118, 296 U.S. 602, 80 L.Ed. 426.

Seizure of vessel was sufficient cause to relieve insolvent corporate owner from liability for double wages. *The Trader*, D.C.S.C.1926, 17 F.2d 623.

Filing of petition in bankruptcy against owner of vessel and appointment of receiver is sufficient cause for nonpayment of seamen's wages within time required by this section, to prevent imposition of penalty. *The Acropolis*, D.C.N.Y.1923, 8 F.2d 110.

The circumstance that the owner of a ship is in financial difficulties does not relieve him from the obligation to pay seamen's wages, including extra pay. *Gerber v. Spencer*, C.C.A.Cal.1922, 278 F.

Under this section it is sufficient cause to exonerate the owners from liability that while on a voyage the master wrongfully took possession of their vessel, converted the greater part of the cargo, which was the property of the owners, to his own use, and refused to return with the vessel as ordered, and that the owners, who were without money to pay the crew, at considerable expense obtained possession of the vessel, and brought it within the jurisdiction of the court, where it could be, and was, subject to sale for the payment of the wages due. *The Gen. McPherson*, D.C. Wash.1900, 100 F. 860.

The arrest of vessel by libel in admiralty and financial inability of owner to make payment were "sufficient cause" for delay in payment of wages to seaman so as to excuse vessel from liability for penalty wages. *Todd Shipyards Corp. v. The City of Athens*, D.C.Md. 1949, 83 F.Supp. 67.

Where failure to pay wages of members of crew was through inability and not through willfulness, statutory penalty of double wages for delay in payment of wages of crew would not be imposed. *The Herbert L. Rawding*, D.C. S.C.1944, 55 F.Supp. 156.

Crew members were not entitled to double time for delay in payment of wages due at date of libel of vessels by preferred ship mortgagee, where members were not employed by the month or for any stated period, and were paid from time to time only for services actually performed from day to day, and well-understood precarious financial condition of owner of vessels, and generally were desirous of continuing their employment from time to time so long as possible by enabling owner to continue in business. *The Eastern Shore*, D.C. Md.1940, 31 F.Supp. 964.

Seamen were not entitled to recover penalty of double wages where cause of default in payment thereof was owner's insolvency. *The Pacific Hemlock*, D.C. Wash.1932, 3 F.Supp. 305.

Seamen cannot recover the penalty under this section, when the net proceeds from the sale of the vessel are insufficient to pay the officers and crew, and it does not appear that the master could have raised a sufficient sum for the pur-

pose. *The Wenonah*, D.C.Me.1875, Fed. Cas.No.17,412.

46. Injury or illness

Under circumstances disclosed, including fact that wages for time accumulated during seaman's illness were being paid in whole or in part from insurance funds and that he registered no protest to delayed payment, action of ship's master in failing to pay seaman's wages at time and place of discharge could not be held "without sufficient cause", so as to entitle him to "waiting time" award. *Kalantzis v. Mesar*, C.A.Va.1957, 245 F.2d 705.

Where Argentine seaman was injured while Argentine vessel was tied up at port of United States, vessel was paying for care of seaman in hospital and vessel was liable for such maintenance and care under Argentine law, fact of such payment could not excuse failure to pay balance of wages to seaman and would not preclude allowance of penalty for delay in such payment, in suit by seaman. *The Fletero v. Arias*, C.A.Va. 1953, 206 F.2d 267, certiorari denied 74 S.Ct. 220, 346 U.S. 897, 98 L.Ed. 398.

Where owner of Argentine vessel discharged Argentine seaman who was injured while vessel was tied up at U. S. port, owners failed to pay balance due on wages for 201 days and there was no controversy as to balance due and no reasonable excuse for not paying such wages, penalty of double wages would be allowed seaman, in suit against vessel and Argentine owner. *Id.*

Withholding seaman's wages during period of disability was not penalty, where injury occurred outside service of ship. *Meyer v. Dollar S. S. Line*, C.C.A. Wash.1931, 49 F.2d 1002.

Seaman receiving leg injury in good natured scuffle with fellow shipmate was not entitled to wages to end of voyage, since injury did not occur in "service of ship." *Id.*

A shipowner has no right to require as a condition of payment the execution of a release of damages for a personal injury. *The Lake Gaither*, C.C.A.Va. 1930, 40 F.2d 31.

A seaman who was injured while playing baseball on shore leave and who was unable to return to work before the voyage ended was not entitled to wages while incapacitated or to penalty imposed by this section for nonpayment of wages since injury was received outside the course of the seaman's employment. *Collins v. Dollar S. S. Lines*, D.C.N.Y. 1938, 28 F.Supp. 395.

47. Neglect or disobedience

Evidence that vessel's chief engineer unlawfully concealed contraband on vessel which caused vessel to be fined by Danish Customs Authority authorized denial of recovery of penalty by engineer for withholding of wages by shipowners in amount of fine levied and established that withholding was not without sufficient cause. *Chambers v. Moore McCormack Lines*, C.A.Pa.1950, 182 F.2d 747.

Chief engineer was entitled to full amount of claim for wages, notwithstanding damage to boiler when he used salt water on master's authorization. *The Chester*, D.C.Md.1923, 25 F.2d 908.

Seamen employed by charterer, who absconded, were entitled to penalties, since failure of charterer to pay was "without sufficient cause," notwithstanding financial inability. *Id.*

Seamen discharged for incompetence were entitled to recover wages and penalty for delay in payment, but not extra month's wages. *Swanson v. Torrey*, C.C.A.Va.1928, 25 F.2d 835.

A claim of offset for articles intrusted to a seaman as chief steward when he shipped, and not accounted for by him at the end of the trip, with no proof of negligence on his part, does not furnish the sufficient cause required by this section to relieve for the penalties therein provided. *Schmidt v. Pacific Mail Steamship Co.*, D.C.Cal.1913, 209 F. 264, affirmed 214 F. 513, reversed on other grounds 36 S.Ct. 531, 241 U.S. 245, 60 L. Ed. 982.

Where there was fair ground for claiming the right to reduce the wages of a mate because of neglect of duty, the refusal to pay him the agreed wages in full on his discharge was not "without sufficient cause," so as to subject the master or owner to the penalty imposed by this section. *The Sadie C. Sumner*, D.C.Mass.1905, 142 F. 611.

Where a fine had been imposed on a seaman for disobedience, but the same was unavailable as a defense to an action for wages for failure of the ship's master to enter the offense in the ship's logbook on the day it occurred, the ship was justified in contesting its liability, and was therefore not liable to a fine for unreasonable delay in payment of the seaman's wages. *The St. Paul*, D.C.N.Y. 1904, 133 F. 1002.

Where seaman wilfully and without justification inflicted injuries upon another seaman, and vessel owner withheld payment of wages of seaman who caused

Note 48

injuries, under honest but mistaken belief that withholding was justified by law, seaman was not entitled under this section to recover double wages because of the withholding. *Johnson v. Isbrandtsen Co.*, D.C.Pa.1950, 91 F.Supp. 872, affirmed 190 F.2d 991, affirmed 72 S.Ct. 1011, 343 U.S. 779, 96 L.Ed. 1294.

48. Overtime and bonus pay

In *Hibel* in admiralty by Greek seamen against master, owners and operating agents of Greek steamship for compensation for waiting time and for other relief, wherein it appeared that seamen had not been paid certain overtime to which they were entitled, evidence established that errors in overtime calculations were inadvertent clerical mistakes and that there had been no withholding of money without cause within meaning of this section. *Livanos v. Pateras*, C.A. Va.1951, 192 F.2d 319, certiorari denied 72 S.Ct. 1042, 343 U.S. 950, 96 L.Ed. 1352.

Seamen, who did not present themselves to sign off and get wages because of controversy as to overtime, vacation pay, and wage increase, could not recover damages on theory that failure to pay wages within 24 hours was without sufficient cause, where paymaster offered to adjust the controversy if seamen and their union representatives would remain aboard, but representatives did not remain aboard and adjusted the controversy later, when seamen were properly paid off. *Pikna v. The Telfair Stockton*, C.A.Va.1949, 174 F.2d 472.

Where master's doubt as to validity of seamen's claims to be paid any part of special war bonus as wages was justified, the refusal to pay was not "without sufficient cause" so as to authorize recovery of penalty under this section providing for penalty if master refuses to pay wages upon demand "without sufficient cause." *Glandzis v. Callinicos*, C.C.A.N.Y.1944, 140 F.2d 111.

In suit in admiralty to recover unpaid wages based on theory that employee was entitled to straight time during period of his employment as extra deck hand at \$75 per month, he having been paid only for the days he actually worked, and for overtime put in by him on the days he was working, where employer contended that employee was employed as a relief deck hand to be paid only for the days he actually worked at rate of \$2.50 per day and that he was not to be paid for any overtime, evidence sustained finding for employer. *Jordan v. Texas Co.*, C.C.A.N.C.1941, 123 F.2d 614.

This section has no application to delay in paying a bonus promised for remaining with an unseaworthy ship. The *Jacob Luckenbach*, D.C.La.1929, 36 F.2d 331.

"War bonus" payments are a part and parcel of earned wages payable as such. *Kalantzis v. Mesar*, D.C.Va.1955, 132 F.Supp. 745, affirmed 245 F.2d 705.

Provision, which was contained in agreements between seaman's union and vessel owner and operator, and which called for seaman to receive \$10 a day for each day payment of overtime wages was delayed, provided for a penalty, not liquidation of damages, and, accordingly, was unenforceable. *Forster v. Oro Nav. Co.*, D.C.N.Y.1954, 128 F.Supp. 113, affirmed 228 F.2d 319.

This section setting forth rights of seaman to collect wages within two days after termination of agreement or at time of discharge does not authorize recovery of overtime wages in absence of contract. *Dendrinis v. City of New York*, D.C.N.Y.1949, 86 F.Supp. 688.

Owner of vessel had not wrongfully and without sufficient cause withheld payment of overtime wages to seamen in view of substantial question of law as to whether they were entitled to payment for extra hours of work. *Id.*

Evidence warranted chief steward's recovery from owners of vessel of overtime wages and wages for four days which steward remained on duty at master's request beyond termination of the articles. *Butler v. U. S. War Shipping Administration*, D.C.Pa.1946, 68 F.Supp. 441.

Where seaman justifiably signed off ship at Hong Kong because captain intended to take ship to Shanghai thereby exposing seaman to perils not contemplated under shipping articles, and basic wages then due were paid, even if accrued bonus and overtime payments were wages, failure of captain to then pay accrued bonus and overtime payments, upon advice of vice-consul, and instead deferring such settlement to shipping company in New York, was not such arbitrary, high-handed, capricious or unconscionable conduct as to authorize penalty under this section for failure to make wage payments within two days after discharge, in absence of intent to abuse by withholding money due, and of palpable injustice. *Rivera v. Isbrandtsen Co.*, 1952, 112 N.Y.S.2d 70, 202 Misc. 703.

Under this section providing that master or owner who neglects to pay sea-

man "without sufficient cause" shall be liable for double pay, refusal of master to pay crew members a service bonus because owners had advised master that provision of collective agreement between owners and maritime unions covering the item had been terminated was not without sufficient cause. *Neapolidis v. Theofana Maritime Co.*, 1951, 63 S.E. 2d 795, 192 Va. 90, certiorari denied 72 S.Ct. 36, 342 U.S. 831, 96 L.Ed. 629.

49. Release

Where seaman signed mutual release stating that no wages were due him after he had consulted his union representative about sum claimed as wages due and after he had been advised by ship's office that no wages were due and he had made no demand for back wages at time of discharge, seaman was not entitled to penalty for failure of owner of vessel to pay wages. *Elliot v. Pacific Far East Line, C.A.Cal.1955*, 230 F.2d 238, certiorari denied 76 S.Ct. 199, 350 U.S. 915, 100 L.Ed. 802.

In action against owner of vessel for wages and penalty wages brought by seaman, who had signed a certificate of mutual release addressed to owner of vessel in which it was stated that no wages were due from owner, which had deducted a certain sum on account of hospital bills and other expenses allegedly due to seaman's misconduct, evidence sustained finding that seaman had entered mutual release without complete understanding of situation and therefore he was not bound thereby. *Id.*

Discharged employees of ship, signing statements of account and releases, were not entitled to penalties for wrongful withholding of wages. *Columbia River Smoked Fish Co. v. Lovesteen, C.C.A.Wash.1927*, 20 F.2d 122.

Where a seaman became sick without his fault during a voyage, and was placed in a hospital at a certain port, and on his discharge from the hospital in a penniless condition was required to sign a statement that he accepted his wages, which had been left with the United States consul, as payment in full for the voyage in order to obtain such wages, the seaman, in an action to recover wages for the remainder of the voyage, was not entitled to double pay under this section; the section being inapplicable and being designed for the protection of seamen, to prevent abuses, and subjecting a seaman to expense while waiting for settlement. *Halvorsen v. U. S.*, D.C.Wash.1922, 284 F. 285.

Seaman's release of "all claims for wages" was applicable to the penalty for

wages withheld, due seaman discharged without fault on his part from the master or owner, under this section. *Cox v. Lykes Bros.*, 1921, 189 N.Y.S. 268, affirmed 193 N.Y.S. 173, 204 App.Div. 442, reversed on other grounds 143 N.E. 226, 237 N.Y. 376.

50. Tender of wages

In suit by injured Argentine seaman who was discharged while vessel was tied up at U. S. port for balance due on wages and penalty for delay in payment of such wages, where owners unconditionally tendered an amount in payment of wage and overtime claim, such tender stopped running of "waiting time" under this section providing for penalty for delay in payment of wages. *The Fletero v. Arias, C.A.Va.1953*, 206 F.2d 267, certiorari denied 74 S.Ct. 220, 346 U.S. 897, 98 L.Ed. 398.

A conditional tender of wages due seaman who is discharged while vessel is at U. S. port will not have effect of stopping the running of "waiting time" under this section providing for penalty for delay in payment of wages to discharged seaman. *Id.*

Evidence showed that seamen were entitled to recover wages for three-day period involved, but since non-payment was not due to refusal or neglect by the master or owner, but to seamen's rejection of tender of payment seamen were not entitled to recover any penalty therefor. *Mavromatis v. United Greek Shipowners Corp., C.A.Me.1950*, 179 F.2d 310.

Where controversy over seaman's wages was submitted to American Consul and Consul ruled against seaman and American office refused claim until ship on which seaman had worked and which contained record of his employment arrived in port, and where payment of wages was tendered after arrival of ship on day Shipping Commissioner to whom controversy was submitted found in favor of seaman, refusal to pay wages was not arbitrary or "without reasonable cause," so as to entitle seaman to recover double-wage penalty under this section. *Gold v. Matson Nav. Co., C.C.A. Cal.1934*, 73 F.2d 808.

Tender of seaman's wages on condition that receipt be given for all wages was sufficient to prevent recovery of waiting time, and the captain having once made proper tender of seaman's wages was under no obligations to repeat tender to prevent recovery of waiting time. *The Corapeake, C.C.A.Va.1931*, 46 F.2d 262, certiorari denied 52 S.Ct. 9, 284 U.S. 622, 76 L.Ed. 530.

Note 50

Where ship's cook was wrongfully discharged, but wages were tendered at time and refused, he could not recover double wages. *Trent v. Gulf Pacific Lines*, D.C.Tex.1930, 42 F.2d 903.

Tender of wages due seaman on condition that he accept same in full settlement was unwarranted, and the seaman was entitled, under this section, to recover double wages from the time of tender to date of decree. *The Lake Galewood*, D.C.Md.1927, 21 F.2d 987.

A tender of a sum insufficient to pay wages due to seamen and penalties for delay in making such payment, does not release the ship from liability under a libel for such wages. *Gerber v. Spencer*, C.C.A.Cal.1922, 278 F. 888.

Tender of wages, which was made to seaman at time of his discharge, but which was made upon a condition other than the signing of a receipt for money received, was not sufficient to prevent vessel owner and operator from being liable under this section, imposing penalty for failure, without sufficient cause, to pay discharged seaman earned wages within certain time. *Forster v. Oro Nav. Co.*, D.C.N.Y.1954, 128 F.Supp. 113, affirmed 228 F.2d 319.

51. Transportation costs

Vessel owner could not set off against allowance to seaman for transportation to his port of signing on its expenditures for medical care and hospitalization of another member of the crew necessitated by injuries inflicted on him by the seaman without justification during the voyage. *Isbrandtsen Co. v. Johnson*, Pa.1952, 72 S.Ct. 1011, 343 U.S. 779, 96 L.Ed. 1234.

Where seaman was discharged at port other than port at which seaman signed on vessel, and under shipping articles seaman was entitled to transportation back to port at which he signed on, amount due to seaman for such transportation was an item of "wages" within this section requiring owner of vessel making coasting voyages to pay every seaman his wages within specified times. *Johnson v. Isbrandtsen Co.*, D.C. Pa.1950, 91 F.Supp. 872, affirmed 190 F.2d 961, affirmed 72 S.Ct. 1011, 343 U.S. 779, 96 L.Ed. 1294.

Owner of vessel was not subject to penalty for wrongfully deducting from wages of seaman who overstayed his shore leave the cost of transporting him by air to rejoin vessel in another port, since there was some justification for assuming that vessel would not be obliged to bear such transportation costs.

Burns v. Blidberg Rothchild Co., 1949, 91 N.Y.S.2d 55, 195 Misc. 625.

52. Nonpayment not warranted, particular cases

In suit in admiralty by Greek seamen against master, owners and operating agents of Greek steamship for compensation for alleged illegal advances, and other relief, evidence established that amounts paid to libellants in Canal Zone, which were alleged to be in nature of illegal advances, had been fully earned at time of payment. *Livanos v. Pateras*, C.A.Va.1951, 192 F.2d 319, certiorari denied 72 S.Ct. 1042, 343 U.S. 950, 96 L.Ed. 1352.

Evidence supported finding that ship owner refused or neglected, without sufficient cause, to make payment of earned wages, or any part thereof, due to seaman at time of his discharge from ship at Kobe, Japan, and, hence, seaman was entitled to decree for double wages. *Wieder v. Isbrandtsen Co.*, C.A.N.Y.1951, 186 F.2d 496.

Evidence failed to support finding that conditions in Japan at time of seaman's discharge from ship at Kobe, Japan, made it reasonable to delay payment of balance of wages due seaman until he left Kobe, as regards issue as to when seaman was entitled to start recovering double wages under this section from ship owner for wrongful withholding of wages. *Id.*

In libel for wages by crew members who had abandoned torpedoed ship on captain's order, evidence supported finding that captain told the men that they would lose their wages because they had brought salvage suit. *Usatorre v. The Victoria*, C.A.N.Y.1949, 172 F.2d 434.

Greek merchant seaman was entitled to recover "double pay" for withholding of portions of his wages under "collective agreement" which was made with union of which seaman was a member and which provided that a certain portion of each seaman's wages consisting of "compulsory savings", were to be withheld and deposited in bank for benefit of seaman until after signing of armistice. *Venides v. United Greek Ship-owners Corp.*, C.C.A.N.Y.1948, 168 F.2d 681.

Withholding of seamen's wages under "collective agreement" which was made with union of which seaman was a member and which provided that a certain portion of each seaman's wages consisting of "compulsory savings", were to be withheld and deposited in bank for ben-

ent of seaman until after signing of armistice was improper. *Id.*

Seamen were entitled to wages after arrival at port of discharge for time kept aboard because of ship's failure to have consular crew list. *The Sonderborg*, C.C.A.Va.1931, 47 F.2d 723, certiorari denied 52 S.Ct. 7, 284 U.S. 618, 76 L. Ed. 527.

Withholding from seamen notice of arbitrary charges made against them for expense of delay when seamen refused to work rendered this section applicable. *Id.*

Minor alien seaman, ordered by immigrant inspector to ship on vessels bound for foreign port, was entitled to penalty under this section for master's failure to pay them. *Mystic S. S. Co. v. Stromland*, C.C.A.Va.1927, 20 F.2d 342, rehearing denied 21 F.2d 607, certiorari denied 48 S.Ct. 213, 276 U.S. 618, 72 L. Ed. 734.

Master's refusal to pay wages admittedly due, unless accepted in full, was unwarranted, and seamen were entitled to double pay penalty. *Mandelin v. Kenneally*, C.C.A.Va.1926, 11 F.2d 344.

Seaman was entitled to double pay as a penalty but not as against other lien claimants for a period prior to the filing of the libel, where without excuse he delayed assertion of his claim and demand for double pay. *The Morning Star*, D.C.Wash.1924, 1 F.2d 410.

An agreement by a ship's agent to assign to the proctor for seamen a portion of the freight sufficient to cover their wages was not sufficient to prevent further penalties for nonpayment of the wages, where the shipper had dealt with another agent of the ship as principal and paid the freight to such agent in whose hands it was attached. *Gerber v. Spencer*, C.C.A.Cal.1922, 278 F. 886.

Under this section, and in view of the express provision of section 601 of this title, that seamen's wages shall not be subject to attachment or arrest from any court, the service of trustee process from a state court is not "sufficient cause" for refusal to pay a seaman his wages, and does not protect the owner from liability for the additional payment required by the section. *Burns v. Fred L. Davis Co.*, C.C.A.Mass.1921, 271 F. 439.

A payment made to a seaman of wages not then earned, or one made on the termination of a voyage, but not in the presence of a commissioner, cannot be shown in defense to a libel by the seaman to recover wages shown to have

been earned. *The Alexander M. Lawrence*, D.C.Ala.1900, 101 F. 135.

Where an injured seaman insisted upon payment of earned wages as of February 28, 1956, and despite such insistence, no effort was made to pay balance of wages and "waiting time" until May 4, such action was tantamount to "neglect" and was "without sufficient cause" and subjected shipowners to double wages for a period of 66 days. *Spero v. The Argodon*, D.C.Va.1957, 150 F.Supp. 1.

An attachment of the seamen's wages is no excuse for delay in payment, and the penalty is recoverable. *The John E. Holbrook*, D.C.N.Y.1874, Fed.Cas.No. 7,359.

53. Nonpayment warranted, particular

Payment into court to cover prospective holding of liability of wages to seamen was not a basis for holding seamen's adversaries bound by any sort of estoppel, and award of less than such amount to seamen was not error. *Korthinos v. Niarchos*, C.A.Va.1950, 184 F.2d 716, certiorari denied 71 S.Ct. 612, 2 mems., 341 U.S. 905, 95 L.Ed. 1343.

The failure to pay again the amount of advances after there has been a settlement in good faith and the amount of wages due the seamen has actually been paid with no question raised as to legality of advances is not a failure to pay wages "without sufficient cause" so as to subject the vessel to claim for double wages under this section. *Korthinos v. The Niarchos*, C.A.Va.1949, 175 F.2d 730, rehearing denied 175 F.2d 734, certiorari denied 70 S.Ct. 241, 338 U.S. 894, 94 L.Ed. 550, rehearing denied 70 S.Ct. 345, 339 U.S. 934, 94 L.Ed. 579.

"Good cause" for setting aside wage settlement or even a release given by seamen in settlement for wages is that the settlement does not include the full amount due after advances forbidden by statute are eliminated. *Id.*

Where shipping owner refused to pay overtime to wiper who was promoted to fireman at lesser rate of wages when regular fireman became sick without any change in shipping articles as required by section 564 of this title, finding of District Court that, since a determination of wiper's rights was not free from difficulty, owner's refusal to pay was based on "sufficient cause", and that wiper was therefore not entitled to a penalty, was proper. *Bender v. Waterman S. S. Corp.*, C.C.A.Pa.1948, 168 F.2d 428.

Note 53

Penalties imposed by this section for master's failure to pay wages due seaman were properly disallowed in latter's action against steamship company for wages due, in absence of showing that such failure was arbitrary or unreasonable. *Martinez v. Matson S. S. Co., C.C. A. Texas 1938, 97 F.2d 19.*

Seaman was not entitled to recover waiting time, where it was not shown that master, in refusing to pay wages, acted arbitrarily or unjustly. *The Easterner, C.C.A. Va. 1931, 47 F.2d 605.*

Seamen consenting to longer voyage than contracted for, and receiving pay without delay, were not entitled to penalty. *The Caribbean, D.C. Tex. 1930, 45 F. 2d 245.*

Failure to pay steamship steward additional wages was not "willful" within section justifying imposition of penalty. *The New Jersey, D.C. Tex. 1928, 31 F.2d 115, affirmed 31 F.2d 116.*

Appointment of equity receiver was "sufficient cause" for nonpayment of seamen's wages to escape penalty. *Feldman v. American Palestine Line, D.C.N. Y. 1926, 25 F.2d 1002.*

Additional wages are not recoverable as penalty, when seamen were in fault. *The Ella Pierce Thurlow, D.C. Va. 1926, 18 F.2d 675.*

Under this section seamen were not entitled to double wages during the ship's delay at an intermediate port for repairs though thereby the term of the voyage exceeded that specified in shipping articles, if the owner was without fault and the seamen were paid off when discharged, shipping articles specifying duration of voyage merely require the master to make an honest and intelligent effort to keep the voyage within specified time, and the seamen take the risk of contingencies prolonging the voyage. *Corrigan v. U. S., D.C.N.Y. 1923, 298 F. 610.*

Conflicting evidence considered, it did not show that seamen's wages were withheld without sufficient cause, so as to subject the owner to the penalty provided by this section. *The Sentinel, D.C.N.Y. 1907, 152 F. 564.*

Where agreements between vessel and members of steward's department for allowance to such members of two months wages if discharged without just cause or proper reason was made while vessel was engaged on third voyage and thereafter a fourth voyage was made under articles which did not contain provision for two months extra wages and, in any

event, libeling of vessel and subsequent sale by marshal was cause of their discharge, commissioner properly disallowed claim for two months extra wages. *Todd Shipyards Corp. v. The City of Athens, D.C. Md. 1949, 83 F. Supp. 67.*

A chief steward was not entitled to double amount of wages withheld for alleged shortage in slop chest account, notwithstanding that vessel owners were not legally justified in withholding the wages, where there was sufficient cause for the withholding. *Butler v. U. S. War Shipping Administration, D.C. Pa. 1946, 68 F. Supp. 441.*

Where master of ship registered under laws of Greece, who purportedly entered into wage agreement with cook, was not the master at end of voyage, and it appeared that master at end of voyage had no personal knowledge of the actual wage agreement and that list upon which cook's name appeared stated that he was to be paid according to the Greek scale and that, upon such basis, cook was not entitled to any additional wages, master's refusal to pay cook's claim for additional wages pursuant to alleged agreement was with sufficient cause, and, hence, did not subject master to penalty of double time. *Assimacopoulos v. Kulukundis Shipping Co., S. A., D.C.N.Y. 1942, 44 F. Supp. 752.*

III. PROCEDURE

Subdivision Index

Generally	81
Burden of proof	85
Costs	89
Decree	87
Evidence	86
Jurisdiction	82
Pleading	84
Review	88
Time for bringing suit	83

81. Generally

Seaman, availing himself of right to bring action in law court for wages claimed, is bound to conform to statute which by the *lex fori* regulates the means to enforce the right. *Buckley v. Oceanic S. S. Co., C.C.A. Cal. 1925, 5 F. 2d 545.*

The remedy under this section for delay in payment of wages is penal. *Corrigan v. U. S., D.C.N.Y. 1923, 298 F. 610.*

Under this section, where seamen were discharged, and payment of wages refused, they were entitled to libel the

vessel at once therefor, without instituting proceedings under sections 603 and 604 of this title, such sections being permissive only. *The Elihu Thompson*, D. C.Wash.1905, 139 F. 89.

Where contract between maritime union and employer provided that time off pay would be granted to seamen belonging to union only when seamen were properly relieved, and that any dispute or grievance arising in connection with provisions of the agreement should be settled according to certain procedure which included arbitration, claim of seaman, who was a member of union, for wages and penalty, on ground that he was entitled to time off pay, was an issue referable to arbitration, and court would grant employer stay of proceeding until arbitration had been had. *Jones v. Mississippi Val. Barge Line Co.*, D.C.Pa.1951, 98 F.Supp. 787.

Whether seamen had contractual right to recover overtime wages was matter for trial. *Dendrinis v. City of New York*, D.C.N.Y.1949, 86 F.Supp. 688.

Whether receipt of wages by seamen from City of New York was in full satisfaction of claims for wages so as to preclude subsequent recovery of overtime was matter for trial. *Id.*

52. Jurisdiction

Where wages of Argentine seaman who was injured while vessel was tied up at United States port were not paid him at time he was discharged from vessel and balance due for wages was not tendered until more than 8 months after discharge, court properly took jurisdiction, in seaman's suit for wages and waiting time, pursuant to this section requiring that upon discharge of seaman in port of United States his full wages shall be paid to him and imposing penalty of double wages for delay in payment. *The Fletero v. Arias*, C.C.Va.1953, 206 F.2d 287, certiorari denied 74 S.Ct. 220, 346 U.S. 897, 98 L.Ed. 398.

Where injury was sustained by Argentine seaman while Argentine ship was tied up at dock at Norfolk, survey of vessel and other proofs were available there, Norfolk counsel had prepared case, and dismissal would entail danger that cause would be barred by Argentine statute of limitations, even if only injury claim had been involved, court did not abuse discretion in taking jurisdiction, in seaman's suit for injuries, wages due and waiting time. *Id.*

Federal District Court had discretion to take jurisdiction of libels by crew members who were aliens against vessel

flying Argentine flag and owned by Argentine corporation for salvage and wages. *Usatorre v. The Victoria*, C.A.N.Y. 1949, 172 F.2d 434.

Admiralty court had jurisdiction of controversy over wages between foreign master and ship and foreign seamen. *The Sonderborg*, C.C.A.Va.1931, 47 F.2d 723, certiorari denied 52 S.Ct. 7, 284 U.S. 618, 76 L.Ed. 527.

Convention of Nov. 19, 1902, art. 12, between Greece and United States, excludes jurisdiction of an admiralty court of the United States of a suit for wages and penalty, under this section, by a German seaman against Greek vessel. *The Cambitsis*, D.C.Pa.1926, 14 F.2d 236.

Foreign seaman who shipped on foreign vessel under foreign flag could not bring action for wages in District Court under this section and section 597 of this title, where vessel was not in United States harbor. *Transportes Maritimos Do Estado v. Almeida*, C.C.A.N.Y. 1925, 5 F.2d 151, transferred 44 S.Ct. 449, 265 U.S. 104, 68 L.Ed. 933.

Whether district court had jurisdiction of causes of action against a Greek corporation to recover unpaid wages allegedly due a Greek national for services as seaman aboard a vessel of Greek registry, owned and operated by defendant corporation and penalties as provided by this section for nonpayment of such wages depended upon questions of fact as to whether seaman was employed or discharged in a port of the United States and such questions should be determined only upon oral testimony or oral depositions or written interrogatories with right of cross-examination, and not on motion to dismiss for want of jurisdiction supported only by affidavits. *Tselentis v. Michalinos Maritime Commercial Co.*, D.C.N.Y.1952, 104 F. Supp. 942.

Allegations of Belgian seamen that voyage was abandoned in violation of terms of employment, that their demand on master for less than half of balance of wages earned was refused in violation of this section, and that master was also liable thereunder for penalties for double wages brought seamen's libel against Belgian vessel within statutes and gave the district court jurisdiction, where occupation of Belgium by armed forces of Germany deprived seamen of a forum in Belgium, and there was no suggestion that vessel was immune as a public vessel in the service of the Belgian government. *The Gandia*, D.C.N.Y. 1940, 34 F.Supp. 405.

Note 82

The jurisdiction of the district court of seamen's libel against Belgian vessel to recover wages due and penalties under statutes could not be challenged by the Belgian consul or the master after the vessel was libeled by a deputy marshal. *Id.*

A seaman's action for double wages, under this section, was not an action for a "penalty," the jurisdiction of which is exclusively conferred upon the United States courts by section 1355 of Title 28. *Cox v. Lykes Bros.*, 1924, 143 N.E. 226, 237 N.Y. 376. See, also, *Lonnberg v. Knox*, 1924, 204 N.Y.S. 852, 123 Misc. 148.

§3. Time for bringing suit

Where seaman filed libel, in his suit against vessel for \$300 in earned wages and \$30.545 in waiting time, more than seven years after his discharge, claim was barred by laches, in absence of allegation of reason for delay in instituting suit. *Gonzales v. The Archangelos*, C.A.Va.1957, 245 F.2d 412.

Claim for penalty was barred by delay of eight months. *The New Jersey*, D.C. Tex.1928, 31 F.2d 115, affirmed 31 F.2d 116.

Penalty under this section for delayed payment was limited to 15 days from time libels were filed in view of circumstances. *The Chester*, D.C.Md.1928, 25 F. 2d 908.

Penalty under this section for withholding seamen's pay was properly limited to ten days on failure to ask for immediate hearing. *Mystic S. S. Co. v. Stromland*, C.C.A.Va.1927, 21 F.2d 607.

Double wages recoverable by seaman, under this section, during wrongful delay in payment of wages due, are considered as wages and not as penalty, and claim therefor in law court held governed by two-year statute of limitation, *West's Ann.Code Civ.Proc.* § 339, rather than by section 2462 of Title 28, permitting suits to recover penalty to be commenced within five years after accrual. *Buckley v. Oceanic S. S. Co.*, C.C.A.Cal.1925, 5 F.2d 545.

Provision for extra pay was designed as compensation for delay and failure to wait before filing the libel for wages will not prevent its recovery where no one has been injured thereby. *The Chas. L. Baylis*, D.C.N.Y.1885, 25 F. 862.

Where seaman was discharged in foreign port on January 21, 1951, and commenced action for his earned wages and double wage penalty in May, 1951, and issue was joined June 14, 1951, following

removal to Federal Court, and order was obtained granting preference for trial on April 21, 1952, but action was not brought to trial until almost two years after preference was granted, seaman would be entitled to double pay for 300 days. *Forster v. Oro Nav.*, D.C.N.Y. 1954, 128 F.Supp. 113, affirmed 228 F.2d 319.

Action by seaman to recover for injuries allegedly caused by negligence and unseaworthiness of defendant and for earned wages plus penalty for withholding thereof was an action at law, and doctrine of laches was inapplicable. *Haychuck v. South Atlantic S. S. Line*, D.C.Pa.1954, 127 F.Supp. 49.

Where this section fixing penalties for withholding wages earned by seaman contained no statute of limitations, the law of the forum in which court was sitting would control. *Id.*

A libel by seaman for penalty wages based on ground that ship was unseaworthy because of improper manning by reason of which the seaman was forced to leave the ship at a foreign port, brought more than two years after seaman left ship, was barred by limitations as against claim that the two-year period must be computed from the completion of the voyage to the United States port which would bring the libel within the limitation period. *Myers v. U. S.*, D.C.N.Y.1949, 81 F.Supp. 747.

Seamen discharged at the home port, without payment of any portion of their wages, the amount of which was not disputed, were entitled to recover double pay for 10 days, although their suit was brought within 10 days from the discharge. *The Columbia*, D.C.N.Y.1873, Fed.Cas.No.3,034.

Where a vessel has fully discharged her cargo in her port of delivery and leaves that port on other voyages, without payment of wages, the seamen, although accompanying her, are entitled to an action for such wages immediately. *The Edward*, D.C.N.Y.1832, 1 Blatchf. & H. Adm. 286, Fed.Cas.No.4,289.

Fifteen days will be taken as a reasonable time for a vessel to unload in ordinary cases, and where, for wages due on the delivery of the cargo, a vessel was arrested on the fourteenth day after she was moored, in her port of discharge, the suit was dismissed as prematurely brought. *The Martha*, D.C.N.Y.1830, 1 Blatchf. & H. Adm. 151, Fed.Cas.No.9,144.

Where diligence has not been practiced by seaman suing for wages, penalties under this section providing for pen-

alty if master refused to pay wages upon demand without sufficient cause may properly be limited to a date prior to that of the decree. *Rush v. Isbrandtsen Co.*, Sup.1949, 96 N.Y.S.2d 508.

In action for seaman's wages and penalties under this section, where trial court was convinced that plaintiff had not proceeded with reasonable dispatch, trial court, in exercise of its discretion, would reduce jury's award of penalties for the period of 180 days to 120 days. *Id.*

84. Pleading

In action by seaman to recover damages allegedly caused by negligence and unseaworthiness of defendant, fact that amendment to complaint so as to include a claim for earned wages would embarrass defendant in assembling proof on the subject-matter and that seaman's failure to include his claim for earned wages and penalties in his original complaint prevented defendant from abating his penalties would not operate to bar claim for earned wages and penalties. *Haychuck v. South Atlantic S. S. Line*, D.C.Pa.1954, 127 F.Supp. 49.

A libel by seaman for penalty wages on ground that ship was unseaworthy due to improper manning, causing seaman to leave the ship at foreign port prior to completion of voyage, was dismissible against the ship in view of ownership thereof by the United States making the ship exempt from arrest or seizure under section 741 of this title. *Myers v. U. S.*, D.C.N.Y.1949, 81 F.Supp. 747.

A libel by seaman for penalty wages on ground that ship was unseaworthy because of improper manning, causing seaman to leave the ship at a foreign port prior to completion of the voyage, was not subject to dismissal on exceptions because of the seaman's laches notwithstanding that the government might be embarrassed in assembling proof concerning the alleged desertion of the seaman. *Id.*

85. Burden of proof

In seaman's action to recover wages withheld without seaman's consent, vessel owners had burden of proving that the withholding was legally justified. *Butler v. U. S. War Shipping Administration*, D.C.Pa.1948, 68 F.Supp. 441.

86. Evidence

Seamen who asked for judgment for withheld wages on answers made by their adversaries in state court, knowing

that adversaries were contending that only advances made in United States could be considered as basis for judgment, and who did not seek to introduce further evidence as to other advances or to submit further interrogatories with regard thereto, could not insist that case be reopened and that they be allowed to submit further interrogatories in attempt to bolster their position after judge had decided against them. *Korthinos v. Niarchos*, C.A.Va.1950, 184 F.2d 716, certiorari denied 71 S.Ct. 612, 2 mems., 341 U.S. 905, 95 L.Ed. 1343.

In seamen's wage cases, whether judge would set aside judgment and permit filing of additional interrogatories pursuant to motion made on day of judgment but not received until next day was within his sound discretion. *Id.*

Receipt of salary payments by seamen from City of New York without protest did not as a matter of law release any claim which as seamen they might have to overtime wages but it was potent evidence that such payment was in full under terms of their employment by city, and the action of seamen in signing payroll without protest placed upon them heavy burden of proving that receipts were not in full accord and satisfaction of their claims. *Dendrinis v. City of New York*, D.C.N.Y.1949, 86 F.Supp. 688.

Under this section and section 597 of this title providing for payment of wages to seaman and authorizing a double recovery in the event of delay in payment, libelants seeking to recover for extra work were required to establish that they were seamen, that they were entitled to payment for extra work and that owner of vessel had wrongfully and without sufficient cause withheld such payment. *Id.*

Third mate, having failed to establish claim against United States for overtime, could not recover double pay under this section for failure to pay such overtime as part of wages due within time required by this section. *Young v. U. S.*, D.C.Tex.1948, 78 F.Supp. 954.

Evidence supported finding that cook, who was a subject of Kingdom of Greece, was entitled to recover additional wages earned while working on a steamship registered under laws of same kingdom, where it appeared that cook's wages were to be governed by special agreement entered into by cook and master of ship, and not by Greek law. *Assimacopoulos v. Kulukundis Shipping Co., S. A.*, D.C.N.Y.1942, 44 F.Supp. 752.

Note 87

87. Decree

Evidence in libel proceedings by seamen for wages justified decree awarding nothing to libelants not appearing at trial. *Galatis v. Galatis*, C.C.A.Fla.1932, 55 F.2d 571.

A decree in a libel proceeding under this section by seamen may properly provide that, if transportation and subsistence are not furnished to libelants from satisfaction of the provisions of the decree, in lieu thereof each libellant shall receive a specified cash payment. *Gerber v. Spencer*, C.C.A.Cal.1922, 278 F.

not determine whether this section was applicable. *The Victoria*, D.C.N.Y.1948, 76 F.Supp. 54, reversed on other grounds 172 F.2d 434.

89. Costs

In seamen's wage cases, offsetting costs recovered by adversaries against costs recovered by seamen in proceedings up to and including prior appeal was not error so long as nothing was set off against awards on account of wages. *Korthinos v. Niarchos*, C.A.Va.1950, 184 F.2d 718, certiorari denied 71 S.Ct. 612, 2 mems., 341 U.S. 905, 95 L.Ed. 1343.

88. Review

In seaman's action against ship owner for balance of earned wages remaining unpaid, together with double wages pursuant to this section, where commissioner heard oral testimony of libellant, of ship's master, and of several other witnesses and believed libellant's testimony, and such testimony was not refuted by respondent's written communications with its own agents, district judge had to accept commissioner's findings as must the Circuit Court of Appeals on appeal. *Wieder v. Isbrandtsen Co.*, C.A.N.Y.1951, 186 F.2d 496.

Where court found seamen were entitled to recover wages withheld and penalties and referred matter to commissioner to compute amount of such wages and penalties, commissioner could

On libel for penalty under this section for refusal to pay seaman's wages, in which ship company admitted seaman was entitled to regular wages, award of costs to ship company was not error where refusal was not without reasonable cause and seaman had refused tender of wages after ruling in seaman's favor of Shipping Commissioner to whom controversy had been submitted, although ship company admitted at trial it owed wages and was still willing to pay them. *Gold v. Matson Nav. Co.*, C.C.A.Cal.1934, 73 F.2d 808.

District Court, though awarding seaman earned wages withheld because of suspicion of desertion, would not allow him costs of action, where suspicion, though unfounded, was warranted by seaman's conduct in leaving ship. *Miller v. U. S.*, D.C.N.Y.1943, 51 F.Supp. 924.

§ 597. Payment at ports

Every seaman on a vessel of the United States shall be entitled to receive on demand from the master of the vessel to which he belongs one-half part of the balance of his wages earned and remaining unpaid at the time when such demand is made at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended, and all stipulations in the contract to the contrary shall be void: *Provided*, Such a demand shall not be made before the expiration of, nor oftener than once in five days nor more than once in the same harbor on the same entry. Any failure on the part of the master to comply with this demand shall release the seaman from his contract and he shall be entitled to full payment of wages earned. And when the voyage is ended every such seaman shall be entitled to the remainder of the wages which shall be then due him, as provided in section 596 of this title: *Provided further*, That notwithstanding any release signed by any seaman under section 644 of this title any court having jurisdiction may upon good cause shown set aside such release and take such action as justice shall require: *And provided further*, That this section shall

apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement. This section shall not apply to fishing or whaling vessels or yachts. R.S. § 4530; Dec. 21, 1898, c. 28, §§ 5, 26, 30 Stat. 756, 764; Mar. 4, 1915, c. 153, § 4, 38 Stat. 1165; June 5, 1920, c. 250, § 31, 41 Stat. 1006.

Historical Note

Derivation. Act July 20, 1790, c. 29, § 6, 1 Stat. 133.

Codification. R.S. § 4530, as enacted originally, provided for the payment of one-third the wages due at every port, etc.

Act Dec. 21, 1898, amended R.S. § 4530 to read: "Every seaman on a vessel of the United States shall be entitled to receive from the master of the vessel to which he belongs one-half part of the wages which shall be due him at every port where such vessel, after the voyage has commenced, shall load or deliver cargo before the voyage is ended unless the contrary be expressly stipulated in the contract; and when the voyage is ended every such seaman shall be entitled to the remainder of the wages which shall then be due him as provided in section forty-five hundred and twenty-nine of the Revised Statutes."

Act Mar. 4, 1915, added the provisos and the sentence following the first proviso, commencing with the words

"any failure," and changed the first part of the section to read as follows: "Every seaman on a vessel of the United States shall be entitled to receive on demand from the master of the vessel to which he belongs one-half part of the wages which he shall have then earned at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended and all stipulations in the contract to the contrary shall be void."

By Act June 5, 1920, the words "the balance of his wages earned and remaining unpaid at the time when such demand is made" were substituted for "the wages which he shall have then earned" in the first sentence, and the words "nor more than once in the same harbor on the same entry" added to the first proviso.

Exception. Application of and exceptions to act Dec. 21, 1898, see note under section 569 of this title.

Cross References

Application of section to vessels in coastwise trade, etc., see section 563 of this title.

Notes of Decisions

Amount

Generally 9

Particular cases 10

Bonuses 12

Burden of proof 17

Compliance or refusal, demand for payment 8

Constitutionality 1

Construction 2, 3

With other laws 3

Costs, evidence 21

Demand for payment 5-8

Generally 5

Compliance or refusal 8

Time 6

Waiver or withdrawal 7

Desertion 15

Evidence 20, 21

Costs 21

Foreign vessels and seamen 13

Jurisdiction

Generally 18

Particular cases 19

Law governing 4

Pleading and procedure 16

Refusal 8

Releases 14

Termination of voyage 11

Time, demand for payment 6

Waiver or withdrawal, demand for payment 7

1. Constitutionality

This section is not invalid as destructive of contract rights, as it is for this government to determine upon what terms and conditions vessels of other countries may be permitted to enter our

Note 1

harbors. *Strathearn S. S. Co. v. Dillon*, Fla.1920, 40 S.Ct. 350, 252 U.S. 348, 64 L. Ed. 607.

If Congress had authority to enact this section, it is not within the province of the Supreme Court to inquire whether consideration for contractual rights under engagements legally made in foreign countries would suggest a different course. *Id.*

This section, as applied to foreign seamen on foreign vessels entering American ports, although subversive of their contracts, is constitutional. *The Westmeath*, C.C.A.N.Y.1919, 258 F. 446, affirmed 40 S.Ct. 353, 252 U.S. 353, 64 L.Ed. 612.

2. Construction

The La Follette Act of March 4, 1915, amending this section, "has a general police and remedial purpose, which makes a strong appeal for a liberal construction in advancement of the ends in view." *The London*, D.C.Pa.1917, 238 F. 645, appeal dismissed 241 F. 863, 154 C.C. A. 565.

3. — With other laws

These provisions, read in connection with R.S. § 4536, repealed, protect seamen's wages from seizure on execution or attachment. *Wilder v. Inter-Island Steam Nav. Co.*, Hawaii 1908, 29 S.Ct. 58, 211 U.S. 239, 53 L.Ed. 164, 15 Ann.Cas. 127.

Withholding provisions of Alaska income tax law, *Laws Alaska 1949*, c. 115, §§ 1 et seq., are not invalid as applied to wages of vessel personnel by reason of alleged inconsistency with this section, sections 682-685, 599-601, and 605 of this title relating to the payment of seamen's wages in full without deduction and free from attachment or assignment, or by reason of alleged inconsistency with body of general maritime rules. *Alaska S. S. Co. v. Mullaney*, C.A.Alaska 1950, 180 F.2d 805.

This section providing that when voyage is ended every seaman shall be entitled to remainder of wages which shall be then due him, as provided in section 596 of this title, does not bestow benefits of said section providing penalty of double wages for neglect or refusal to pay wages on seaman who does not come within language of said section, and unless seaman can show that his wages are due as provided in said section, he cannot claim the double wage penalty. *Mahar v. Gartland S. S. Co.*, C.C.A.N.Y.1946, 154 F.2d 621.

4. Law governing

Where employee on city sludge boat brought libel in admiralty to recover overtime pay, and it was conceded that no city employee had authority to promise compensation for overtime and that libellant was aware of such fact, enforcement of local law requirement that municipal employees could not be paid overtime compensation unless contract therefor was made by municipal agent authorized with respect thereto by local law would not be disruptive of uniformity of the general maritime law, even though seamen not employed by municipality might have been entitled to receive overtime compensation. *Sorensen v. City of New York*, C.A.N.Y.1953, 202 F.2d 857, certiorari denied 74 S.Ct. 674, 347 U.S. 951, 98 L.Ed. 1097.

Shipping articles signed before a British consul in an Italian port are governed by British law and not by the La Follette Act of 1915, this section. *The Hannington Court*, D.C.N.Y.1918, 252 F. 211.

The rights of a seaman in this country are controlled by this section, and not by the flag of the vessel on which he is serving. *The Ixion*, D.C.Wash.1916, 237 F. 142. See, also, *The Talus*, D.C.Ala. 1917, 242 F. 954, reversed on other grounds 248 F. 670, affirmed 39 S.Ct. 84, 248 U.S. 185, 63 L.Ed. 200.

Certificated seamen employed as oilers by City of New York aboard sludge vessel which carried waste from sewage disposal plants to dumping ground were eligible as "seamen" to sue under this section and section 596 of this title, and their rights were governed thereby rather than by local law, though they had not signed shipping articles and were civil service employees, boarding and living at home, and were paid and received other benefits as city employees. *Dendrinos v. City of New York*, D.C.N.Y.1949, 86 F.Supp. 688.

The provision of Argentine code that no member of crew can bring proceedings against ship until voyage is over under pain of loss of pay due is in contravention of this section and section 596 of this title relating to payment of wages of seamen and is ineffective when Argentine ship is in a harbor in the United States. *Usatorre v. Compania Argentina Navegacion Mihanovich, Ltda.*, D.C.N.Y.1945, 64 F.Supp. 370, reversed on other grounds 172 F.2d 434.

On a libel by a Roumanian seaman against a Roumanian ship subsequently changed to Panamanian registry, to recover wages, etc., where it appeared that

the contract of employment was written in Roumania and entered into in Italy before the Roumanian consul, the Roumanian law governed. *The Prahova*, D. C. Cal. 1941, 38 F. Supp. 418.

5. Demand for payment—Generally

Under this section, master must be given a reasonable time, at least if he requests it, in which to ascertain the situation and meet the demand, and the demand must be made in good faith, and may not be used to obtain a technical breach of the articles in order to enable seamen to abandon a ship which for other reasons they no longer wish to serve. *U. S. v. Albers*, C.C.A.N.Y. 1940, 115 F.2d 833. See, also, *The Tairoa*, C.C.A.N.Y. 1924, 297 F. 449.

Crew of vessel entering port for repairs, not to load or unload cargo, was not entitled to make demand for half wages, under this section. *U. S. v. Smith*, C.C.A. La. 1926, 12 F.2d 265, certiorari denied 46 S.Ct. 638, 271 U.S. 686, 70 L.Ed. 1152.

Demand for wages in sum not equivalent to half pay is not demand under this section. *The Nancy*, D.C. Pa. 1926, 11 F.2d 318.

The demand on the master by seamen for the half of the wages to which they were entitled under this section, at an intermediate port, must be a reasonable demand, and must be plainly made, so that the master may know exactly what is demanded of him, since the refusal of the demand makes the whole wages instantly due, with possible damages. *The Hougomont*, C.C.A.N.Y. 1921, 272 F. 881.

A demand is essential to the right to half wages at an intermediate port, under this section. *The Italier*, C.C.A.N.Y. 1919, 257 F. 712.

It is only a demand for the payment of one-half part of the wages earned which stands in the way of the making of another such demand within five days thereafter, consequently where on the arrival of a ship in port a demand for less than one-half of the earned wages is complied with, the seaman receiving such payments is not barred from making a further demand within the time prescribed by this section. *Rederaktiebolaget Transatlantic v. Eklund*, C.C.A. La. 1919, 256 F. 95.

This section gives to every seaman the right to demand from the vessel at each port where such vessel, during her voyage, loads or delivers cargo, one-half of such wages as the seaman shall, at the time of such demand have earned. The

Talus, D.C. Ala. 1917, 242 F. 954, reversed on other grounds 248 F. 670, affirmed 39 S.Ct. 84, 248 U.S. 185, 63 L.Ed. 200.

Under this section, demand and refusal are necessary to put the master in default. In *re Ivvertsen*, D.C. Cal. 1916, 237 F. 498.

Under this section, and in view of section 599 of this title, a seaman on foreign vessel who has earned wages while vessel was in port of the United States is entitled on demand to one-half of such wages, though master has already paid him more than one-half of all wages earned while on the voyage. *The Ixion*, D.C. Wash. 1916, 237 F. 142.

In determining whether foreign seaman was entitled to enforce payment of wages to which he was entitled, in the United States courts, voyage might be considered as having terminated by change of flags or by abandonment of the voyage. *The Prahova*, D.C. Cal. 1941, 38 F. Supp. 227.

Evidence established that seamen failed to demand one-half of wages due to them when ship reached United States port, so as to be entitled to payment of such wages pursuant to this section. *The Austvard*, D.C. Md. 1940, 34 F. Supp. 431.

6. — Time

A seaman on a foreign vessel need not wait five days after arrival in an American port before demanding the half of his wages. *Strathearn S. S. Co. v. Dillon*, Fla. 1920, 40 S.Ct. 350, 250 U.S. 348, 64 L.Ed. 607.

Half wages need not be paid on demand made after the vessel has cleared and about an hour before she leaves the port. *The Willfaro*, D.C. Wash. 1923, 286 F. 440.

The demand must be made while the seaman is still in the ship's service. *The Italier*, C.C.A.N.Y. 1919, 257 F. 712. See, also, *The Tairoa*, C.C.A.N.Y. 1924, 297 F. 449.

As seamen on foreign vessels have no rights under this section, until they arrive within a harbor of the United States, the five-day period which must elapse before demand for half wages may be made thereunder begins to run on the arrival of the ship in such harbor. *The Italier*, C.C.A.N.Y. 1919, 257 F. 712.

A seaman cannot demand any wages until at least five days' services have been rendered, and he cannot thereafter demand the half part of such wages as may be subsequently earned until five

Note 6

days have elapsed from the last or prior payment of one-half of his wages. The Talus, D.C.Ala.1917, 242 F. 954, reversed on other grounds 248 F. 670, affirmed 39 S.Ct. 84, 248 U.S. 185, 63 L.Ed. 200.

Under this section as amended, where a vessel remains in port five days after the seamen have demanded and received one payment, they are entitled to demand and receive a second payment. The Jacob N. Haskell, D.C.Fla.1916, 235 F. 914.

7. — Waiver or withdrawal

On a libel by seamen, evidence that the libelants, who had not waived their rights after alleged refusal of their demand for half wages, had made no such demand in person, but were relying on an alleged demand made by other seamen, who had subsequently waived their rights based on such demand, did not show that the positive demand for half wages required by this section had been made. The Hougomont, C.C.A.N.Y.1921, 272 F. 881.

Where seamen, after their demand on the master for half wages at an intermediate port was refused, accepted payments from the master which amounted to more than the half wages then due them, they thereby waived their right to maintain a libel for the penalties under this section based on the refusal of the demand. *Id.*

Where seamen voluntarily remained on a vessel, performing services and receiving wages therefor, after their demand for the half wages due them at an intermediate port had been refused by the master, they waived their rights under this section based upon such refusal. *Id.*

Receipt of salary payments by seamen from City of New York without protest did not as a matter of law release any claim which as seamen they might have to overtime wages but it was potent evidence that such payment was in full under terms of their employment by city, and the action of seamen in signing payroll without protest placed upon them heavy burden of proving that receipts were not in full accord and satisfaction of their claims. *Dendrinos v. City of New York*, D.C.N.Y.1949, 86 F.Supp. 688.

8. — Compliance or refusal

The refusal by shipmaster of seamen's rightful demand for payment of half of wages earned released seaman from this obligation to the ship and entitled him to balance of wages he had earned. In re Williams, C.C.A.Md.1943, 139 F.2d 262.

In prosecution for endeavoring to make a revolt on board an American vessel, in violation of section 483 of Title 18, trial court's charge that if master, after refusing with some irritation crew's demand for a "draw" of wages, early the next morning offered the men their "draw", shipping orders were not broken and crew had no right to disobey any of master's orders, if error, was not prejudicial, where crew continued to remain on board and occupy quarters of the crew, since this section merely gave crew right to full pay to date and privilege of leaving service of ship without being chargeable with desertion and resulting forfeiture of pay in event master refused their demand of a "draw" on salary and did not give crew right to stay on board and do as little or as much work as they chose. *U. S. v. Albers*, C.C.A.N.Y.1940, 115 F.2d 833.

Seamen, denied half pay immediately when demanded, were not entitled, after abandoning ship, to full pay to date of refusal and double pay to date of payment. The Nancy, D.C.Pa.1926, 11 F.2d 318.

The penalty for waiting time under section 598 of this title cannot be recovered where the master has not had a reasonable time to comply with the demand. The Tairoa, C.C.A.N.Y.1924, 297 F. 449.

Where, on demand by seamen on arrival at American port for payment of half their earned wages, the master stated that he did not have money and banks had closed, but offered them store orders, which they accepted and used in part, they could not thereafter dispute validity of payment pro tanto, nor put master in default, so as to entitle them to full payment and discharge without a further demand. The Pinna, C.C.A.La. 1919, 255 F. 642.

The master of a vessel is entitled to reasonable time to prepare himself to comply with a demand by seamen for half of their wages under this section. *Id.*

Owner of vessel had not wrongfully and without sufficient cause withheld payment of overtime wages to seamen in view of substantial question of law as to whether they were entitled to payment for extra hours of work. *Dendrinos v. City of New York*, D.C.N.Y.1949, 86 F.Supp. 688.

9. Amount—Generally

The provision of this section entitling seamen to one-half earned wages at ev-

ery port is intended to guarantee to seamen the payment of their wages. *Lakos v. Saliaris*, C.C.A.Md.1940, 116 F.2d 440.

This section was not intended to secure seamen benefits if claim is based on unreasonable conduct in connection with demand. *The Nancy*, D.C.Pa.1926, 11 F.2d 818.

Half wages at an intermediate port need not be paid to seamen who at the time of demanding the same are, without justification, refusing duty. *The Willfarro*, D.C.Wash.1923, 286 F. 440.

A tender of wages on behalf of a ship, which was insufficient to cover the amount of wages when earned and the penalty for delay in payment already accrued, is not sufficient to release the liability for penalties for delay in paying wages, under this section and section 596 of this title. *Gerber v. Spencer*, C.C. A.Cal.1922, 278 F. 836.

In computing the wages due to seamen at an intermediate port, half of which they were entitled to demand at that port, payments theretofore made to the seamen were to be deducted from the half of the wages which they were entitled to demand. *The Hougomont*, C. C.A.N.Y.1921, 272 F. 881. See, also, *The Thor*, D.C.Cal.1918, 248 F. 942; *The Clematis*, D.C.N.Y.1917, 244 F. 484; *The Meteor*, D.C., 241 F. 735; *The London*, D.C.Pa.1917, 238 F. 645, affirmed 241 F. 863, 154 C.C.A. 565.

Prior to the last amendment of this section, the amount to which the seaman was entitled was one-half his gross earnings during the voyage to the time, less all prior payments. *The Rathlin Head*, C.C.A.La.1920, 262 F. 751, certiorari denied 40 S.Ct. 394, 252 U.S. 585, 64 L.Ed. 729. See, also, *Low Ling Sing v. Standard Transp. Co.*, D.C.N.Y.1921, 274 F. 1017.

The prevailing construction was that when a vessel arrived at a port in the United States, the seaman was entitled to be paid one-half of the wages he had earned up to that time, and against such one-half there must be charged all prior payments which he had received. *The Sutherland*, D.C.Me.1919, 260 F. 247.

Under this section sailors are entitled to demand, at every American port one-half of wages earned, but not one-half of wages due. *The Pinna*, D.C.La.1918, 252 F. 203.

In computing the wages earned by a seaman, and to which he is entitled to half payment at intermediate ports under this section, an advance payment,

made in a foreign country, where lawful, is to be deducted. *The Talus*, Ala. 1918, 248 F. 670, 160 C.C.A. 570, affirmed 39 S.Ct. 84, 248 U.S. 185, 63 L.Ed. 200. See, also, *The Italier*, C.C.A.N.Y.1919, 257 F. 712.

The word "earned," as used in this section, is used in the sense of owing, and to describe wages for which the seaman has done the work, whether then due or not. *The Talus*, Ala.1918, 248 F. 670, 160 C.C.A. 570, affirmed 39 S.Ct. 84, 248 U.S. 185, 63 L.Ed. 200.

Under this section a seaman is not entitled to one-half of his wages earned since a previous payment, where it appeared that such previous payment exceeded one-half of the wages already earned by him. *The Meteor*, D.C.Ala. 1917, 241 F. 735.

Advance wages paid to seamen on a foreign vessel in a foreign port cannot be deducted in computing the amount earned in a suit to recover half wages in an intermediate port in the United States, under this section. *The Imberhorne*, D.C.Ala.1917, 240 F. 830.

The seaman is entitled at each intermediate port to one-half of the sum due him. In re *Ivertsen*, D.C.Cal.1916, 237 F. 493.

10. — Particular cases

Recovery by foreign seamen for advances made in ports of the United States before wages had been earned cannot be limited to the amount of the prohibited advances made on the final voyage but advances made during the two previous voyages should be included. *Mavromatis v. United Greek Ship-owners Corp.*, C.A.Me.1950, 179 F.2d 310.

Wages earned, to half of which this section declares a seaman entitled at a port before end of voyage, were unaffected by advances before wages are earned, by the act declared unlawful. *The Delagoa*, D.C.N.Y.1917, 244 F. 835.

A seaman at a port before end of voyage was entitled to payment of enough, and only enough, taken with what he had already been paid, to make up half of what he had then earned. *Id.*

Where a vessel remained in port five days after one payment had been there made, the seamen were entitled to demand and receive another payment, but such payment in any case need be of one-half only of the amount earned since the last previous payment, leaving in the hands of the master one-half the wages earned during the voyage until

Note 10

its termination. *The Jacob N. Haskell*, D.C.Fla.1916, 235 F. 914.

Where seaman who joined vessel at Boston for foreign voyage was given his discharge in Egypt and hospitalized there on account of syphilis, he was entitled to wages earned without deduction of expenses paid by owner and operator of vessel for his medical treatment, hospitalization and transportation to the United States. *Keen v. U. S.*, D.C. N.Y.1951, 99 F.Supp. 633, affirmed 199 F. 2d 151.

A Roumanian seaman, suspended on January 3 because of disobedience, became entitled to his discharge when the ship ceased to fly the Roumanian flag on January 25, and was entitled to the wages becoming due between January 25 and the date of the decree, at the original contract rate, without penalty. *The Prahova*, D.C.Cal.1941, 38 F.Supp. 418.

The indemnity of a certain number of months' wages provided by Roumanian law in case of the discharge of a seaman without good cause is in the nature of liquidated damages for wrongful discharge, and is not considered as "wages earned" within the contemplation of this section entitling the seaman thereto on discharge. *Id.*

Under section 599 of this title providing that advances to seamen are illegal and that master or owner remains liable for full pay when actually earned, illegal advances made at end of second voyage could not be applied to discharge claims for illegal advances made at end of earlier voyage, and hence seamen could recover advances made on both occasions. *Neapolidis v. Theofana Maritime Co.*, 1951, 63 S.E.2d 795, 192 Va. 90, certiorari denied 72 S.Ct. 36, 342 U.S. 831, 96 L.Ed. 629.

11. Termination of voyage

An agreement by Greek seamen that portion of wages denominated "war bonus" be deposited in Bank of Greece instead of being paid to the seamen themselves contravened provision of this section requiring that at end of voyage seamen be paid remainder of wages due them, and where voyage ended in a port of the United States, payment to seamen of such portion was required, notwithstanding their agreement to the contrary. *Lakos v. Saliaris*, C.C.A.Md.1940, 116 F.2d 440.

Under this section and section 564 of this title, neither master nor crew can renounce their duties under the contract until the end of the voyage, which means

the port of destination, not a port of distress; so that the seamen are bound to serve until the voyage ends in the port of destination, if it is extended beyond the time mentioned in the contract, not by the intention or negligence of the master, which would be a breach of the contract releasing the seamen, but by perils of the sea. *Hamilton v. U. S.*, C. C.A.Va.1920, 268 F. 15, certiorari denied 41 S.Ct. 15, 254 U.S. 645, 65 L.Ed. 454.

In section 596 of this title, construing said section with this section, the words "within 24 hours after the cargo has been discharged" refer to discharge on completion of the voyage for which the seaman shipped. *The Cubadist*, C.C.A. Ala.1919, 256 F. 203, certiorari denied 39 S.Ct. 392, 249 U.S. 618, 63 L.Ed. 804.

Under this section the voyage is ended for any particular seaman when his period of employment under his contract ends. *The Cubadist*, D.C.Ala.1918, 252 F. 658.

Under shipping articles for a voyage from New York, where a master returned to the United States and discharged at a port other than New York, seamen were then entitled to their wages. *The Catalonia*, D.C.Va.1916, 236 F. 554.

The announcement by the master of a vessel at an outward port after the cargo is finally discharged, that he intends to return to a port not authorized by the shipping articles, and a demand thereupon made by seamen for their wages, constitutes a termination of the voyage so far as such seamen are concerned, and entitles them to an immediate payment of their wages, and the fact that the vessel is about to proceed to sea before the end of the ten days gives them the right to sue immediately under section 604 of this title. *The Laura Madsen*, D.C.Cal.1897, 84 F. 362.

Seamen shipped for an outward voyage, "and back to a final port of discharge in the United States." The vessel was returning in ballast, bound for New York, when she became disabled in a gale, and bore away for Key West. There she discharged her crew, who were paid wages until their discharge, made temporary repairs, shipped another crew, and proceeded to New York. No cargo was loaded or ballast unloaded at Key West. New York, and not Key West, was her final port of discharge, and the original crew were entitled to recover against the vessel the cost of their passage from Key West to New York. *Schermacher v. Yates*, D.C. N.Y.1893, 57 F. 668.

In order to effect the termination of a voyage at a port of refuge, there must be some other act than the discharge of the crew. *Id.*

While it is true as a general rule that seamen will not be entitled to wages until the voyage is completed, there are exceptions to it, and among them is the case of a vessel employed to perform certain work or duties in a specified locality, and not engaged in carrying freight from port to port. *Olsen v. The Edwin Post*, D.C.Del.1881, 6 F. 314.

A voyage is ended and a seaman's wages become due when the vessel is moored at her final port of destination, and if wages are not paid within ten days thereafter, the seaman is entitled to admiralty process against the vessel. *The Annie M. Smull*, D.C.Or.1872, Fed. Cas.No.423.

A seaman is not bound to stay by the ship after her arrival at the final port of destination, and assist in discharging her cargo, unless the shipping articles contain a contract to that effect, or the established custom of the port requires it. *Id.*

The voyage is not completed until the unloading of the cargo or ballast. *The Eagle*, D.C.N.Y.1846, Fed.Cas.No.4,233.

Seamen shipped for a voyage to "a port of discharge in the United States" cannot maintain a libel for wages after leaving the ship at a port of distress in the United States. *Fairchild v. The Aurelius*, D.C.Mass.1841, Fed.Cas.No.4,609.

When the ship had reached her port of final destination and was safely moored at the berth, the voyage was then terminated and all sea services on board connected therewith. *Granon v. Hartshorne*, D.C.N.Y.1834, 1 Blatchf. & H.Adm. 454, Fed.Cas.No.5,689.

Where a ship takes ground within her port of destination, but, before arriving at her place of mooring, and afterwards, without having furled her sails or cast anchor, floats off, and comes to her moorings, the voyage is not ended, and consequently wages not earned until she has arrived at her moorings. *Taber v. Nye*, 1831, 29 Mass. 105, 12 Pick. 105.

12. Bonuses

"Wages" are the compensation paid by an employer for services rendered to him by others, and the essential character of such compensation is not altered by designating part of it "war bonus". *Glandzls v. Callinicos*, C.C.A.N. Y.1944, 140 F.2d 111.

Where "supplemental statement" accompanying agreement between Greek shipowners and Greek seamen's unions provided for a special war bonus in addition to basic wage and general war bonus, the special bonus constituted "wages" within this section entitling seamen to one-half earned wages at every port. *Id.*

A so-called "war bonus" payable to Greek seamen on a Greek steamer for voyage and return to the United States, under a contract for payment of Greek wages plus a "war bonus" according to Greek law, constituted merely additional wages for extrahazardous service, and constituted "wages" within provision of this section entitling seamen to one-half earned "wages" at every port. *Lakos v. Saliaris*, C.C.A.Md.1940, 116 F.2d 440.

Calling portion of wages received by seamen a "war bonus" would not alter essential character thereof as "wages" within provision of this section entitling seamen to one-half earned "wages" in every port. *Id.*

13. Foreign vessels and seamen

This section as amended is not limited to American seamen. *Strathearn S. S. Co. v. Dillon*, Fla.1920, 40 S.Ct. 350, 252 U.S. 348, 64 L.Ed. 607.

The amount demandable by a seaman on a foreign vessel is not limited to the wages earned in American ports. *Id.*

Under this section and sections 596 and 597 of this title, a seaman is entitled to payment at termination of his employment of all of his earned wages without any deductions except those which are expressly authorized by this section, and the provisions of this section relating to such matters apply to seamen on foreign vessels in ports of the United States. *Mavromatis v. United Greek Shipowners Corp.*, C.A.Me.1950, 179 F.2d 310.

This section providing penalties in case of payment of seaman's wages in advance of time when he has actually earned them applies to foreign vessels to the extent only that such prohibited advances were made in ports of the United States. *Id.*

In determining Greek seamen's right to recover wages due them upon discharge in an American port, in absence of finding of unlawful coercion, *ex parte* conclusion of the mercantile marine service of the Royal Greek Embassy that by virtue of their "unlawful forcing actions" seamen dissented themselves to a special bonus could not alter the

Note 13

effect of their discharge. *Glandzis v. Callinicos*, C.C.A.N.Y.1944, 140 F.2d 111.

A requirement of agreement between Greek shipowners and Greek seamen's unions requiring submission of the grievances to arbitration was in derogation of seamen's absolute right to immediate payment as guaranteed by this section entitling seamen to one-half earned wages at every port, and hence was void. *Id.*

The protection of provision of this section entitling seamen to one-half earned wages at every port extends to foreign seamen on a foreign vessel within a port of the United States, and secures to them the payment of their wages upon completion of a voyage ending in such port. *Lakos v. Saliaris*, C.C.A.Md.1940, 116 F.2d 440.

Where voyage of Greek vessel ended in a port of the United States, the vessel by entering that port became subject to laws of United States and no wage contract in contravention thereof could be given effect. *Id.*

"The theory of the courts appears to be that, under the statute, [this section] all vessels coming into the jurisdiction of the country come under the laws and regulations of the United States, and that it is competent for Congress to prescribe conditions of entry, and of clearance, for foreign vessels, since it may exclude them altogether. Under the construction given this statute by the federal courts, I must conclude that the statute is applicable to these libelants, although they were foreign seamen on a foreign vessel." *The Sutherland*, D. C.Me.1919, 260 F. 247.

This section is applicable to British seamen shipped on British vessel in British port, while vessel is in an American harbor. *The Strathearn*, C.C.A.Fla. 1913, 256 F. 631, affirmed 40 S.Ct. 350, 252 U.S. 348, 64 L.Ed. 607.

This section by its terms applies to seamen on foreign vessels while in ports of the United States, and, when invoked, must be enforced by the court. *The Imberhorne*, D.C.Ala.1917, 240 F. 830.

Foreign seamen who deserted from foreign vessel in an American port were not entitled as a matter of right to trial in American courts of their action for wages, travel, and repatriation expenses, but such trial rested in court's sound discretion. *Herceg v. Societet Arena, Limited*, D.C.N.Y.1940, 36 F.Supp. 15.

The admiralty court would not decline jurisdiction of libel by seamen who were citizens of foreign countries who signed

articles of agreement with owners of merchant vessel flying the Panamanian flag for an indefinite voyage, who while in port on Mediterranean Sea obtained from captain a writing agreeing to pay to each seaman a war bonus on arriving at a discharging port, and who claimed that on arrival at port in United States one-half of wages was refused, where seamen were in New York City and affidavits showed that they did not have sufficient money to pay passage either to their native lands or to Panama. *The Illenao*, D.C.N.J.1940, 35 F.Supp. 663.

A libel, filed by Greek seaman against Greek vessel for wages due, war bonus, and repatriation to Greece, will be dismissed, as claims for bonus and repatriation must be left entirely to Greek consulate under Treaty with Greece, this chapter did not take such matters from such consulate's jurisdiction, and question of wages due can be readily adjusted by leaving jurisdiction with Greek consulate. *The Memas*, D.C.N.Y. 1940, 35 F.Supp. 661.

14. Releases

Where a seaman, who was left at an intermediate port because of illness, had signed a mutual release on discharge, required by section 644 of this title, and by that section made a bar, but the lower courts found that he was only asked to sign for his wages, and that a discharge was not mentioned, and that the master did not give him the certificate of discharge required by section 643 of this title, a decree allowing the seaman his wages, subsistence and medical attendance will be affirmed, especially in view of this section, allowing a court on good cause shown to set aside such release. *Pacific Mail S. S. Co. v. Lucas*, Cal.1922, 42 S.Ct. 308, 258 U.S. 266, 68 L. Ed. 614.

Where injury was considered much less serious at time release was given by seaman than injury eventually turned out to be and release was signed because of advice given by employer's doctor, that there was nothing wrong with seaman's arm and that pain was caused by toxemia from bad tonsils, whereas nearly four months' additional care was needed before seaman could go back to work, seaman's general release would not be sustained but seaman would be awarded additional maintenance and cure. *The Standard*, C.C.A.N.Y.1939, 103 F.2d 437, certiorari denied 60 S.Ct. 106, 308 U.S. 560, 34 L.Ed. 471, rehearing denied 60 S.Ct. 137, 306 U.S. 636, 34 L.Ed. 528.

Setting aside and disregarding releases signed by discharged employees of ship was not error, in libel by such employees to recover wages and penalties for wrongful withholding of wages as for wrongful discharge, in view of absence of vessel and master from port when release was signed, and surrounding circumstances. *Columbia River Smoked Fish Co. v. Lovsteen*, C.C.A. Wash.1927, 20 F.2d 122.

Discharged assistant engineer, to be relieved from release executed by him, was required to bring himself within section. *The San Lucas*, D.C.N.Y.1932, 1 F.Supp. 883.

Discharged assistant engineer, who acted on legal advice before signing release, could not show "good cause" within section justifying setting aside release. *Id.*

Where seamen signed shipping articles at New York for voyage on coastwise cargo steamer under a voyage charter providing that the termination of voyage was to be a final port of discharge in the United States and the discharge of the seamen at port of New Orleans, La., was in accordance with their written and binding contract and they signed release without force or fraud, duress or compulsion, they could not recover transportation to New York and wages on theory of wrongful discharge. *Hellevik v. American Sugar Transit Corporation*, 1941, 26 N.Y.S.2d 724, 261 App.Div. 591.

Where seamen signing shipping articles at New York which provided that termination of voyage was to be a final port of discharge in the United States and, on termination of voyage at port of New Orleans, La., the seamen signed articles of discharge and release without making complaint that they were entitled to transportation and wages to New York, in seamen's actions for wrongful discharge evidence was insufficient to establish a good cause for which the release could be set aside. *Id.*

A release executed by a needy seaman to obtain his wages, payment of which had been unwarrantably delayed, may be set aside in order to permit action for double pay under section 596 of this title. "We think the inference permissible that for oppression or unfair advantage the annulment of this release would be in furtherance of justice. The trier of the facts so held, and, unless there is no basis in the record for the exercise of discretion, we are not at liberty in this court to say that he was wrong. The plaintiff was told that no money would

be paid without the signing of the paper. He had been kept waiting many weeks; all his money was spent; he was at the end of his resources. He signed what was put before him because he was unable to wait longer. A different question would be here if his right to wages were shown to have been the subject of reasonable controversy. So far as the record shows, payment was withheld without color of excuse. Upon such a showing, wages earned during delay were as plainly due as wages earned during the voyage. Release of the whole, when the right is uncontested, is not a fair condition of payment of a part. There was room, indeed, for misunderstanding whether wages of both kinds were within the terms of the release, though it were allowed to stand as written. The plaintiff speaks of the presence of a lawyer, but what was said is at least consistent with advice and belief that any claim under the statute would survive for enforcement in the future. This much at least is plain. The abandonment of the statutory wages did not emerge from the transaction as the product of treaty and discussion in return for the concession of a payment withheld on reasonable grounds. We conclude that the release does not constitute a bar." *Cox v. Lykes*, 1924, 143 N.E. 226, 237 N.Y. 376.

15. Desertion

Attempt to disrate seaman during voyage did not work "discharge" as regards right to wages after claimed desertion. *The Sharon*, D.C.Va.1931, 52 F.2d 481.

Demand for half wages made after seaman had determined to desert was ineffective. *The Havenside*, D.C.N.Y.1926, 14 F.2d 851.

Seamen, abandoning ship on refusal of improper demand for half wages, were deserters, not entitled to wages, nor excused from performing by seamen's strike. *U. S. v. Smith*, C.C.A.La.1926, 12 F.2d 265, certiorari denied 48 S.Ct. 638, 271 U.S. 686, 70 L.Ed. 1152.

The penalty for waiting time under section 596 of this title cannot be recovered where the seaman, prior to the demand for half wages, deserts the vessel. *The Tairoa*, C.C.A.N.Y.1924, 297 F. 449.

"Under this section, it is plain that the demand for half wages must be made in good faith and while the seaman is still serving the vessel. It may very well happen that the master would not have sufficient funds, and, while he is

Note 15

presumed to know the law, he is entitled to a reasonable opportunity to be advised with reference thereto and to obtain appropriate instructions. What is a reasonable time is always determined by the particular facts of the case. If, for the purpose of argument and without deciding the question, it be assumed that section 4529 [section 596 of this title] applies to seamen of a foreign vessel in an American port, a recovery for waiting time penalty cannot be had, where the seaman, prior to the demand for half wages, deserts the vessel, or where the master has not had a reasonable opportunity to comply with the demand. In expressing this opinion we are merely restating what has heretofore been stated by the courts in several cases. *The Belgier*, D.C.N.Y.1917, 246 F. 961; *The Pinna*, La.1919, 255 F. 642, 187 C.C.A. 18; *The Italier*, N.Y.1919, 257 F. 713, 168 C.C.A. 662; *The Hougomont*, C.C.A.N.Y.1921, 272 F. 881. We might have concluded to affirm the decree below because there was accord and satisfaction, but we prefer to place our decision on the ground indicated supra, in order that it be made clear that, to avail of relevant remedial statutes, there must be a demand by the seaman in good faith prior to any act which can be construed as desertion." *Id.*

The leaving of his ship by a seaman before completion of the voyage, and when the ship was in danger, with intent not to return, and with failure to return, constituted "desertion." *The Levi W. Ostrander*, D.C.Wash.1921, 291 F. 908.

"Desertion," in the sense of the maritime law, is a quitting of the ship and her service, not only without leave and against the duty of the party, but with an intent not again to return to the ship's duty. *The Italier*, C.C.A.N.Y.1919, 257 F. 712.

The offense of desertion in the mercantile marine is not abolished by this section, and such desertion entails a forfeiture of all wages due. *Id.*

A British seaman, who had signed for a voyage on a British ship from England to the United States and return, and who deserted on arrival here before making any demand for wages, forfeited his right to wages and effects under the law of the United Kingdom, and he could not thereafter claim the benefits of this section, entitling a seaman to receive at each port half the wages earned, and to recover all wages earned if the master refused to pay the half on demand. *The Wells City*, D.C.N.Y.1919, 256 F.

Where the master of a British vessel dropped overboard the original shipping articles which libelants signed in a British port and on arriving in United States libelants refused to sign new articles or to return to the vessel as directed by the master, the master was justified in treating libelants as deserters who had forfeited their wages and effects under the British law, and libelants could not recover because the master refused their demand for half wages made thereafter pursuant to this section. *The Nigretia*, C.C.A.N.Y.1918, 255 F. 56, certiorari denied 39 S.Ct. 386, 249 U.S. 612, 63 L.Ed. 802.

This section does not enable men to collect wages by making demands for half wages, which are part of a scheme to leave the ship. *The Belgier*, D.C.N.Y. 1917, 246 F. 966.

The federal District Court declined jurisdiction of libel for wages, travel and repatriation expenses, brought by foreign seamen who deserted from foreign vessel in an American port, and who refused to accept the money due them and their old jobs back, especially where master of ship and other essential witnesses were on the high seas bound for foreign country. *Herceg v. Societet Arena, Limited*, D.C.N.Y.1940, 36 F.Supp. 15.

16. Pleading and procedure

Seaman's libel for wages, based on demand for half pay, did not state cause of action. *Christie v. Carlisle*, D.C.La.1926, 11 F.2d 659.

This section and section 603 of this title, afford seamen a simple and cost-saving mode of recovering their wages if they are not paid within 10 days from the time when they ought to be paid, or if any dispute has arisen between the master and seamen touching wages before the expiration of 10 days, but do not prevent an action at common law for the recovery of his wages or immediate process out of any court having admiralty jurisdiction wherever the vessel may be found, in case she shall have left the port of delivery, where her voyage ended, before the payment of wages or in case she shall be about to proceed to sea before the end of 10 days next after the delivery of her cargo or ballast, or in case his wages have not been paid within 10 days after the time when the same ought to have been paid. *The Shelbourne*, D.C.Ala.1887, 30 F. 510.

Whether receipt of wages by seamen from City of New York was in full satisfaction of claims for wages so as to preclude subsequent recovery of overtime

was matter for trial. *Dendrinios v. City of New York*, D.C.N.Y.1949, 86 F.Supp. 688.

On a libel by a Roumanian seaman against a Roumanian ship for wages, etc., the claimant of the ship was not entitled on a cross-libel to recover the cost of guarding the seaman, whom the immigration authorities ordered detained on board ship; there being enough members of the crew available for guard duty without employing high-priced outside guards. *The Prahova*, D.C.Cal.1941, 38 F.Supp. 418.

In libels by foreign seamen against foreign ships involving wage claims, motion to compel filing of security under admiralty rule on ground that wages sought to be recovered were earned on foreign vessels was denied. *The Almena*, D.C.N.Y.1938, 23 F.Supp. 645.

17. Burden of proof

Under this section providing penalty for payment of seaman's wages in advance of time when he has actually earned them, it is not enough to show that payments had been made on wage account in the course of the voyage but the seaman must further show that a payment of wages had been made in advance of the time when he had actually earned them. *Mavromatis v. United Greek Shipowners Corp.*, C.A.Me.1950, 179 F.2d 310.

Under this section and section 596 of this title providing for payment of wages to seaman and authorizing a double recovery in the event of delay in payment, libelants seeking to recover for extra work were required to establish that they were seamen, that they were entitled to payment for extra work and that owner of vessel had wrongfully and without sufficient cause withheld such payment. *Dendrinios v. City of New York*, D.C.N.Y. 1949, 86 F.Supp. 688.

18. Jurisdiction—Generally

Under this section, and Treaty with Greece, 33 Stat. 2122, as amended to conform thereto, civil courts of United States, rather than consular representatives, have jurisdiction over wage controversies involving Greek seamen, arising within their jurisdiction. *Petition of Therianos*, C.A.3, 1948, 171 F.2d 886.

Under this section, District Court has jurisdiction in cases involving seamen on foreign vessels while in harbors of United States. *The Estrella*, C.C.A.Pa. 1938, 102 F.2d 736, certiorari denied 59 S.Ct. 775, 306 U.S. 658, 83 L.Ed. 1055.

Libel by foreign seamen to establish breach of contract because of unseaworthiness of foreign vessel, and recover balance of wages due thereunder cannot be maintained in United States courts, under this section. *The Strathlorne*, D.C.Or.1926, 15 F.2d 210.

Foreign seamen who shipped on foreign vessel under foreign flag could not bring action for wages in District Court under this section and section 596 of this title, where vessel was not in United States harbor as required by such statutes. *Transportes Maritimos Do Estado v. Almeida*, C.C.A.N.Y.1925, 5 F.2d 151, transferred 44 S.Ct. 449, 265 U.S. 104, 68 L.Ed. 933.

While in a harbor of the United States, a foreign vessel was subject to the law of the United States, and the federal district court had jurisdiction of action brought by crew members to recover wages and penalties. *Usatorre v. Compania Argentina Navegacion Mihanovich, Ltda.*, D.C.N.Y.1945, 64 F.Supp. 370, reversed on other grounds 172 F.2d 434.

The District Court had jurisdiction of seamen's claim notwithstanding all parties were aliens in absence of a pertinent treaty with the United States providing otherwise. *Hansen v. Lorentzen*, D.C.N.Y.1943, 53 F.Supp. 869.

The District Court is vested with discretion as to whether to exercise jurisdiction of seamen's claim where all parties involved are aliens. *Id.*

Where a voyage has ended, the United States courts are open to foreign seamen for enforcement of payment of remainder of wages to which they are entitled. *The Prahova*, D.C.Cal.1941, 38 F.Supp. 227.

In libels against foreign ships involving wage claims by foreign seamen, ship claimants seeking order declining jurisdiction would be required to show affirmative reason for relief sought. *The Almena*, D.C.N.Y.1938, 23 F.Supp. 645.

19. — Particular cases

In absence of findings of fact by District Court respecting exact nature of dispute between Greek consular representative and Greek seamen, Court of Appeals could not decide in prohibition proceeding whether consular representative and hence district court were without jurisdiction because wage dispute was involved. *Petition of Therianos*, C.A.3, 1948, 171 F.2d 886.

Where treaty between United States and Norway gave consular officer jurisdiction over issues concerning adjust-

Note 19

ment of wages of crews of private vessels of his country, but provided that such jurisdiction should not exclude jurisdiction conferred on local authorities, the jurisdiction of District Court in cases involving adjustment of wages of seamen on Norwegian vessels is concurrent with that of Norwegian consul. *The Estrella*, C.C.A.Pa.1938, 102 F.2d 738, certiorari denied 59 S.Ct. 775, 306 U.S. 658, 83 L.Ed. 1055.

Where claim of Norwegian seamen for wages as crew of Norwegian vessel was based upon an alleged Norwegian law, District Court did not abuse its discretion by declining jurisdiction of libel filed by seamen demanding payment of wages, in view of treaty under which those rights could be determined by Norwegian authorities. *Id.*

The District Court, in view of fact that its jurisdiction over controversy involving adjustment of wages of seamen on Norwegian vessel was concurrent with that of Norwegian consul, had discretion to accept or refuse to take jurisdiction. *Id.*

Jurisdiction of admiralty court of suit under this section and section 596 of this title, for wages by seamen against Greek vessel was excluded by treaty. *The Cambitsis*, D.C.Pa.1926, 14 F.2d 236.

Under Convention between United States and the Netherlands May 23, 1878, art. 11, providing that the consular authorities of each nation shall have charge of controversies between masters and crews of vessels of their respective countries "to the exclusion of all local authorities," a court of admiralty of the United States, while given jurisdiction of suits for wages by this section, is without jurisdiction of claims of Dutch seamen, who had left a Dutch vessel, for cost of transportation to Holland. *The Rindjani*, C.C.A.Cal.1919, 254 F. 913.

Whether district court had jurisdiction of causes of action against a Greek corporation to recover unpaid wages allegedly due a Greek national for services as seaman aboard a vessel of Greek registry, owned and operated by defendant corporation and penalties as provided by section 596 of this title for nonpayment of such wages depended upon questions of fact as to whether seaman was employed or discharged in a port of the United States and such questions should be determined only upon oral testimony or oral depositions or written interrogatories with right of cross-examination, and not on motion to dismiss for want of jurisdiction supported only by affidavits.

Tselentis v. Michalinos Maritime & Commercial Co., D.C.N.Y.1952, 104 F.Supp. 942

Where alien seaman entered into contract to work on a voyage which began in United States and was intended to terminate in United States, and was advanced money in United States in violation of section 599 of this title, and amount of advance was subsequently deducted from his wages at a foreign port, and vessel aboard which seaman served under contract was in federal judicial district when respondent appeared, federal district had jurisdiction of action to recover wages deducted. *Stavridis v. Cia Panamena Europa Navegacion, Ltda.*, D.C.N.Y.1950, 90 F.Supp. 187.

The inability of Argentina vessel to continue its return voyage to Argentina after acquisition by United States, did not deprive crew members of the right to bring an action to recover wages in federal District Court under an agreement made or renewed in the United States. *Usatorre v. Compania Argentina Navegacion Mihanovich, Ltda.*, D.C.N.Y. 1945, 64 F.Supp. 370, reversed on other grounds 172 F.2d 434.

The District Court in exercise of discretion would retain jurisdiction of Norwegian and Danish seamen's claim against Norwegian shipowner where because of war it was impossible to reach a Norwegian court, and since an adverse decision by Norwegian Consul seamen diligently sought a remedy in the United States. *Hansen v. Lorentzen*, D.C.N.Y.1943, 53 F.Supp. 869.

On a libel by a Roumanian seaman for his discharge from a Roumanian ship subsequently changed to Panamanian registry and for recovery of wages, etc., the court, having decreed the seaman's right to repatriation at the expense of the shipowners, would retain jurisdiction to consider whether, conditions changing, it should become impossible for the owners to repatriate the seaman within a reasonable time, to hear further evidence and to enter a supplementary decree on the facts then found. *The Prahova*, D.C.Cal.1941, 38 F.Supp. 418.

On a libel by a Roumanian seaman against a Roumanian ship subsequently changed to Panamanian registry, to recover wages, etc., the fact that libellant was an alien, and that his contract, made in Roumania with Roumanian owners, must be construed according to Roumanian law, does not prevent the federal District Court from exercising its jurisdiction in admiralty. *Id.*

Where foreign seaman brought libel in rem wherein he claimed a discharge and wages and allowances on ground that he had served out his contract under Roumanian law, that articles signed by him were broken by the ship by cutting his wages in half without his consent, and that the vessel had been changed from Roumanian registry, if any of the factors set out operated as a discharge, the federal court was bound to hear the controversy. *The Prahova*, D.C.Cal.1941, 38 F.Supp. 227.

Where seaman was Roumanian citizen who had signed articles for an indefinite time under terms and conditions that were given by law of Roumania, and seaman claimed that he was entitled to discharge and wages, and it appeared that status of vessel was uncertain, but that it was no longer of Roumanian registry, and that provision of contract entitling seaman to transportation to Roumania may have become impossible in view of world conditions, and seizure of ship was only way in which seaman had the least assurance of enforcement of his rights, and the charge d'affairs of Roumanian government disclaimed right to interfere with any rights of seaman against vessel, the federal court sitting in admiralty would accept jurisdiction of libel in rem against the vessel to enforce seaman's rights. *Id.*

In action by Greek seaman for maintenance and cure where facts were in dispute and court could not find upon affidavits submitted that Greek Consul had accorded seaman all the rights to which he was entitled, District Court would not decline before trial, on ground of treaty with Greece, to take jurisdiction, in view of this section giving seamen on foreign vessels access to United States courts. *The Memas*, D.C.N.Y. 1940, 35 F.Supp. 837.

District Court would not take jurisdiction of libel by Greek seaman against Greek vessel to recover war bonus allegedly earned by seaman under shipping articles providing for war bonus for passage through war zone, notwithstanding abrogation of provisions of consular convention between the United States and Greece, where bonus, at seaman's direction, had been sent to Bank of Greece. *The Nadin*, D.C.N.J.1940, 35 F.Supp. 390.

Allegations of Belgian seamen that voyage was abandoned in violation of terms of employment, that their demand on master for less than half of balance of wages earned was refused in violation of statute, and that master was also lia-

ble for statutory penalties for double wages brought seamen's libel against Belgian vessel within statutes and gave the district court jurisdiction, where occupation of Belgium by armed forces of Germany deprived seamen of a forum in Belgium, and there was no suggestion that vessel was immune as a public vessel in the service of the Belgian government. *The Gandia*, D.C.N.Y.1940, 34 F.Supp. 405.

The jurisdiction of the district court of seamen's libel against Belgian vessel to recover wages due and penalties under statutes could not be challenged by the Belgian consul or the master after the vessel was libeled by a deputy marshal. *Id.*

Provision of the Greek Treaty giving exclusive jurisdiction to Greek consul to determine controversies respecting wages of seamen on Greek vessels is inconsistent with provisions of this section concerning right of seamen on United States vessels to receive one-half of the wages then earned at every port, to the extent that admiralty courts of United States must have concurrent jurisdiction with Greek consul, in view of express provision of this section that United States courts shall be open to foreign seamen to obtain their wages. *The Leonidas*, D.C.Md.1940, 32 F.Supp. 738, reversed on other grounds 116 F.2d 440.

The provisions of the Greek Treaty giving to consuls-general, etc., exclusive jurisdiction of wage controversies on ships of their nation were abrogated by agreement with the Greek Government in so far as they were inconsistent with provision of this section entitling seamen at end of voyage to remainder of wages which shall then be due, but even in absence of abrogating agreement, a United States court has duty, under provision in the section that it shall apply to seamen on foreign vessels while in harbors of the United States, to take jurisdiction of a libel by a Greek seaman for wages due him at end of voyage which terminates in a port of the United States, since provisions of a statute supersede those of a prior treaty inconsistent therewith. *Id.*

An admiralty court had jurisdiction of libel against foreign ships involving simple wage claims by foreign seamen after consuls to whom foreign seamen had applied for relief had refused to take action on ground that no adjudication could be had in absence of the ship, although after libeling the admiralty court there were presented undertakings by affidavits by consuls to function. *The Almena*, D.C.N.Y.1938, 23 F.Supp. 645.

Note 20

20. Evidence

Evidence showed that district court erred in dismissing libel of Greek seamen for recovery of wages previously advanced. *Mavromatis v. United Greek Shipowners Corp.*, C.A.Me.1950, 179 F.2d 810.

21. Costs

Failure to comply with rightful demand of seamen for payment of half of wages earned, releasing them and entitling them to full payment, they should be adjudged costs on libel therefor. *Rederiaktiebolaget Transatlantic v. Eklund*, C.C.A.La.1919, 256 F. 95.

On a libel by a Roumanian seaman recovering certain wages, etc., and obtaining his discharge from a Roumanian ship, costs would be withheld from the libellant, in view of his frequent breaches of discipline, repeated attempts of the owners to satisfy his demands, and submission by the owners to mediation by the Roumanian Legation and acceptance of the award, which the libellant rejected. *The Prahova*, D.C.Cal.1941, 38 F. Supp. 418.

Libels by foreign seamen against foreign ships involving wage claims were not dismissible on ground that costs had not been prepaid or secured. *The Almeida*, D.C.N.Y.1938, 23 F.Supp. 645.

§ 598. Vessels engaged in taking oysters

Sections 596, 599, and 604 of this title shall apply to all vessels engaged in the taking of oysters. June 28, 1906, c. 3583, § 4, 34 Stat. 551.

Historical Note

Codification. Section as enacted originally, read: "Sections four, six, and twenty-four of chapter twenty-eight of the Acts of Congress, approved December twenty-first, eighteen hundred and ninety-eight, shall apply to all vessels engaged in the taking of oysters, anything in section twenty-six of said last-mentioned Act to the contrary notwithstanding".

Act Dec. 21, 1898, c. 23, §§ 4, 6, 24, 30 Stat. 756, 763, mentioned in the original text, amended R.S. §§ 4529, 4547, and Act June 26, 1884, c. 121, § 10, 23 Stat. 55, respectively (sections 596, 599 and 604, of this title). Sections 28, 30 of that Act provided that certain sections should not apply to fishing or whaling vessels or yachts.

§ 599. Advances and allotments

(a) It shall be unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same, or to pay such advance wages, or to make any order, or note, or other evidence of indebtedness therefor to any other person, or to pay any person, for the shipment of seamen when payment is deducted or to be deducted from a seaman's wages. Any person violating any of the foregoing provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than \$25 nor more than \$100, and may also be imprisoned for a period of not exceeding six months, at the discretion of the court. The payment of such advance wages or allotment, whether made within or without the United States or territory subject to the jurisdiction thereof, shall in no case except as herein provided absolve the vessel or the master or the owner thereof from the full payment of wages after the same shall have been actually earned, and shall be no defense to a libel suit or action for the recovery of such wages. If any person shall demand or receive, either directly or indirectly,

from any seaman or other person seeking employment, as seaman, or from any person on his behalf, any remuneration whatever for providing him with employment, he shall for every such offense be deemed guilty of a misdemeanor and shall be imprisoned not more than six months or fined not more than \$500.

(b) It shall be lawful for any seaman to stipulate in his shipping agreement for an allotment of any portion of the wages he may earn (1) to his grandparents, parents, wife, sister, or children; (2) to an agency duly designated by the Secretary of the Treasury for the handling of applications for United States Savings Bonds, for the purpose of purchasing such bonds for the seaman; or (3) for deposits to be made in an account for savings, or investment opened by him and maintained in his name either at a savings bank or a United States postal savings depository subject to the governing regulations thereof, or a savings institution in which such accounts are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(c) No allotment shall be valid unless in writing and signed by and approved by the Coast Guard official to whom the duties of shipping commissioner have been delegated. It shall be the duty of the said Coast Guard official to examine such allotments and the parties to them and enforce compliance with the law. All stipulations for the allotment of any part of the wages of a seaman during his absence which are made at the commencement of the voyage shall be inserted in the agreement and shall state the amounts and times of the payments to be made and the persons to whom the payments are to be made, or by directing the payments to be made to a savings bank or a United States postal savings depository in an account maintained in his name.

(d) No allotment except as provided in this section shall be legal. Any person who shall falsely claim to be such relation, as above described, or to be a savings bank or a United States postal savings depository and as such an allottee of the seaman under this section shall for every such offense be punished by a fine not exceeding \$500 or imprisonment not exceeding six months, at the discretion of the court.

(e) This section shall apply as well to foreign vessels while in waters of the United States, as to vessels of the United States, and any master, owner, consignee, or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner, or agent of a vessel of the United States would be for similar violation.

The master, owner, consignee, or agent of any vessel of the United States, or of any foreign vessel seeking clearance from a port of the United States, shall present his shipping articles at the office of clearance, and no clearance shall be granted any such vessel unless the provisions of this section have been complied with.

(f) The Commandant of the Coast Guard shall make regulations to carry out this section. This section shall not apply to fishing or whaling vessels or yachts.

(g) The provisions of this section shall not apply to, or render unlawful, deductions made by an employer from the wages of a seaman, pursuant to the written consent of the seaman, if (1) such deductions are paid into a trust fund established for the sole and exclusive benefit of seamen employed by such employer, and their families and dependents (or of such seamen, families, and dependents jointly with seamen employed by other employers and their families and dependents); and (2) such payments are held in trust for the purpose of providing, either from principal or income or both, for the benefit of such seamen, their families, and dependents, medical and/or hospital care, pensions on retirement or death of the seamen, life insurance, unemployment benefits, compensation for illness or injuries resulting from occupational activity, sickness, accident, and disability compensation, or any one or more of the foregoing benefits, or for the purpose of purchasing insurance to provide any one or more of such benefits. June 26, 1884, c. 121, § 10, 23 Stat. 55; Dec. 21, 1898, c. 28, §§ 24, 26, 30 Stat. 763, 764; Apr. 26, 1904, c. 1603, § 1, 33 Stat. 308; Mar. 4, 1915, c. 153, § 11, 38 Stat. 1168; June 5, 1920, c. 250, § 32, 41 Stat. 1006; June 30, 1932, c. 314, § 501, 47 Stat. 415; May 27, 1936, c. 463, § 1, 49 Stat. 1380; May 31, 1939, c. 158, 53 Stat. 794; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097; Sept. 29, 1950, c. 1109, 64 Stat. 1081; Jan. 10, 1951, c. 1222, 64 Stat. 1239.

Historical Note

Codification. Act June 26, 1884, c. 121, as enacted read: "That it shall be, and is hereby, made unlawful in any case to pay any seaman wages before leaving the port at which such seaman may be engaged in advance of the time when he has actually earned the same, or to pay such advance wages to any other person, or to pay any person, other than an officer authorized by act of Congress to collect fees for such service, any remuneration for the shipment of seamen. Any person paying such advance wages or such remuneration shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by a fine not less than four times the amount of the wages so advanced or remuneration so paid, and may be also imprisoned for a period not exceeding six months, at the discretion of the court. The payment of such advanced wages or remuneration shall in no case, except as herein provided, absolve the vessel, or the master or owner thereof, from full payment of wages after the same shall have been actually earned, and shall be

no defense to a libel, suit, or action for the recovery of such wages: Provided, That this section shall not apply to whaling-vessels: And provided further, That it shall be lawful for any seaman to stipulate in his shipping agreement for an allotment of any portion of the wages which he may earn to his wife, mother, or other relative, but to no other person or corporation. And any person who shall falsely claim such relationship to any seaman in order to obtain wages so allotted shall, for every such offense, be punishable by a fine of not exceeding five hundred dollars, or imprisonment not exceeding six months, at the discretion of the court. This section shall apply as well to foreign vessels as to vessels of the United States; and any foreign vessel the master, owner, consignee, or agent of which has violated this section, or induced, or connived at its violation, shall be refused a clearance from any port of the United States."

Act June 18, 1886, c. 421, § 3, 24 Stat. 80, which was subsequently repealed by

Act Dec. 21, 1898, struck out the words "That it shall be lawful for any seaman to stipulate in his shipping agreement for an allotment of any portion of the wages which he may earn to his wife, mother, or other relative, but to no other person or corporation," and inserted in lieu thereof the following: "That it shall be lawful for any seaman to stipulate in his shipping agreement for an allotment of all or any portion of the wages which he may earn to his wife, mother, or other relative, or to an original creditor in liquidation of any just debt for board or clothing which he may have contracted prior to engagement, not exceeding ten dollars per month for each month of the time usually required for the voyage for which the seaman has shipped, under such regulations as the Secretary of the Treasury may prescribe, but no allotment to any other person or corporation shall be lawful," and struck out all of the last paragraph after the words "vessels of the United States," and inserted in lieu thereof the following: "And any master, owner, consignee, or agent of any foreign vessel who has violated this section shall be liable to the same penalty that the master, owner, or agent of a vessel of the United States would be for a similar violation."

Act Dec. 21, 1898, § 24, amended this section prior to its incorporation in the Code, to read:

"(a) It shall be, and is hereby, made unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same, or to pay such advance wages to any other person, any person paying such advance wages shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine not less than four times the amount of the wages so advanced, and may also be imprisoned for a period not exceeding six months, at the discretion of the court. The payment of such advance wages shall in no case, excepting as herein provided, absolve the vessel or the master or owner thereof from full payment of wages after the same shall have been actually earned, and shall be no defense to a libel, suit, or action for the recovery of such wages. If any person shall demand or receive, either directly or indirectly, from any seaman or other person seeking employment as seaman, or from any person on his behalf, any remuneration whatever for providing him with employment, he shall for every such offense be liable to a penalty of not more than one hundred dollars.

"(b) It shall be lawful for any seaman to stipulate in his shipping agreement for an allotment of any portion of the wages which he may earn to his grand parents, parents, wife, sister, or children. But no allotment whatever shall be allowed in the trade between the ports of the United States (except as provided in subdivision C of this section) or in trade between ports of the United States and the Dominion of Canada, Newfoundland, the West Indies and Mexico.

"(c) It shall be lawful for any seaman engaged in a vessel bound from a port on the Atlantic to a port on the Pacific or vice versa, or in a vessel engaged in foreign trade, except trade between the United States and the Dominion of Canada or Newfoundland or the West Indies or the Republic of Mexico, to stipulate in his shipping agreement for an allotment of an amount, to be fixed by regulation of the Commissioner of Navigation, with the approval of the Secretary of the Treasury not exceeding one month's wages, to an original creditor in liquidation of any just debt for board or clothing which he may have contracted prior to engagement.

"(d) No allotment note shall be valid unless signed by and approved by the shipping commissioner. It shall be the duty of said commissioner to examine such allotments and the parties to them and enforce compliance with the law. All stipulations for the allotment of any part of the wages of a seaman during his absence which are made at the commencement of the voyage shall be inserted in the agreement, and shall state the amounts and times of the payments to be made and the persons to whom the payments are to be made.

"(e) No allotment except as provided for in this section shall be lawful. Any person who shall falsely claim to be such relation as above described of a seaman under this section or shall make a false statement of the nature or amount of any debt claimed to be due from any seaman under this section shall for every such offense be punishable by a fine not exceeding five hundred dollars or imprisonment not exceeding six months, at the discretion of the court.

"(f) This section shall apply as well to foreign vessels as to vessels of the United States; and any master, owner, consignee, or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner, or agent of a vessel of the United States would be for a similar violation: Provided, That treaties in

force between the United States and foreign nations do not conflict.

"(g) Under the direction of the Secretary of the Treasury the Commissioner of Navigation shall make regulations to carry out this section."

Section 25 of said Act repealed the previous amendatory provision of Act June 19, 1886, and also repealed R.S. §§ 4531-4534 relating to allotments and advances of seamen's wages.

Section 26 of said Act contained the last sentence in former subsec. (f).

Act Apr. 26, 1904, changed the words at the end of paragraph (a) to read: "he shall for every such offense be deemed guilty of a misdemeanor and shall be imprisoned not more than six months or fined not more than \$500."

Act Mar. 4, 1915, amended section generally, and among other changes omitted subsec. (c), and redesignated former subsecs. (d)-(g) as (c)-(f).

Act June 5, 1920, inserted in paragraph (a) the words: "Whether made within or without the United States or territory subject to the jurisdiction thereof".

1951 Amendment. Subsec. (g) added by Act Jan. 10, 1951.

1950 Amendment. Subsec. (b) amended by Act Sept. 29, 1950, to allow seamen to make allotments from their wages to be used in the purchase of United States Savings Bonds or to be deposited in any institution in which the accounts are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

1939 Amendment. Subsecs. (b), (c), and (d) were amended by Act May 31, 1939, which added provisions allowing deposits to be made in savings banks, or United States postal savings depository.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their

performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

References to shipping commissioner in subsec. (c) were changed to Coast Guard official to whom the duties of shipping commissioner have been delegated and "The Commandant of the Coast Guard" was substituted for "Under the direction of the Secretary of Commerce the Director of the Bureau of Marine Inspection and Navigation" in subsec. (f) on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

"Bureau of Navigation and Steamboat Inspection" was changed to "Bureau of Marine Inspection and Navigation" by Act May 27, 1936, c. 463.

Act June 30, 1932, consolidated and coordinated the Steamboat and Inspection Service of the Bureau of Navigation in the Department of Commerce into the Bureau of Navigation and Steamboat Inspection. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Exception. Application of and exceptions to Act Dec. 21, 1898, see note under section 569 of this title.

Legislative History: For legislative history and purpose of Act Sept. 29, 1950, see 1950 U.S. Code Cong. Service, p. 3982. See, also, Act Jan. 10, 1951, 1951 U.S. Code Cong. Service, p. 4325.

Cross References

Fishing vessels, inapplicability of this section, see section 601 of this title.
Oyster vessels, application of this section, see section 508 of this title.

Notes of Decisions

Generally 3
Advances 3
Allotments 4

Assignee of note for wages
Burden of proof 11
Constitutionality 1

Custom 9
 Evidence 12
 Foreign ports 7
 Release of claim 10
 Seamen within section
 Vessels within section

1. Constitutionality

This section is a valid exercise of the power to regulate commerce, nor does it invade the liberty of contract guaranteed by U.S.C.A.Const. Amend. 14, and Congress had power to extend it to seamen shipping in an American port on a foreign vessel engaged in foreign commerce. *Patterson v. The Eudora*, Pa. 1903, 23 S.Ct. 821, 190 U.S. 169, 47 L.Ed. 1002. See, also, *The Alnwick*, D.C.N.Y. 1904, 132 F. 117.

Act Dec. 21, 1898, § 24, amending this section, which expressly made its requirements as to the shipping of seamen applicable "as well to foreign vessels as to vessels of the United States," provided there was no treaty which conflicted, was within the power of Congress, and was valid and effective. *Kenney v. Blake*, Wash.1903, 125 F. 672, 60 C.C.A. 362.

Act Dec. 21, 1898, amending this section, in prohibiting the prepayment of the wages of seamen, is a constitutional enactment, applying to the prepayment on American soil or in American waters of the wages of seamen, who are British subjects, shipping in American ports on British merchant vessels; there being no treaty between the United States and Great Britain inconsistent with such application. *The Kestor*, D.C.Del.1901, 110 F. 432, appeal dismissed 126 F. 1022.

2. Generally

The seamen's lien for wages does not pass to a shipping agent by reason of advances made to the seamen at the home port. *Seaver v. The Thales*, C.C. N.Y.1850, Fed.Cas.No.12,594.

The section is not in conflict with the stipulations of article 8 of the consular convention with France of February 23, 1853, 10 Stat. 996. 1885, 18 Op.Atty.Gen. 253.

This section does not come in conflict with any rights which, upon principles of international law, other nations are entitled to exercise within our ports as regards their merchant vessels. *Id.*

3. Advances

Advances on wages made to Greek seamen in the United States were unlawful

under this section and amount thereof could be recovered, but recovery was properly denied with respect to other advances not shown to have been made in the United States. *Korthinos v. Niarchos*, C.A.Va.1950, 184 F.2d 718, certiorari denied 71 S.Ct. 612, 2 mems., 341 U.S. 905, 95 L.Ed. 1343.

Under this section forbidding paying any seaman his wages in advance of the time when he has actually earned them and prescribing a criminal penalty for doing so, advances made in violation thereof may not be credited against wages due the seamen for the voyage. *Korthinos v. The Niarchos*, C.A.Va.1949, 175 F.2d 730, rehearing denied 175 F.2d 734, certiorari denied 70 S.Ct. 241, 338 U.S. 894, 94 L.Ed. 550, rehearing denied 70 S.Ct. 345, 339 U.S. 934, 94 L.Ed. 579.

Where sponge boat obtained a crew by promising to pay an agreed share in each catch, and it was customary to pay crew members in advance, some money to be repaid out of share of catch, and if share did not equal the advance, the vessel lost the difference, advances made to master or to crew members directly constituted "wages" and not mere anticipations of profit on a "joint enterprise" within the last sentence of par. (f) of this section. *Pavlis v. Jackson*, C.C.A.Fla.1942, 131 F.2d 362, certiorari denied 63 S.Ct. 761, 318 U.S. 769, 87 L.Ed. 1140.

Deductions made from seamen's wages before sailing, for clothing provided and for sum paid for seaman's board bill, were recoverable as "advances." *The Sonderborg*, C.C.A.Va.1931, 47 F.2d 723, certiorari denied 52 S.Ct. 7, 284 U.S. 618, 76 L.Ed. 527.

Purchasing of necessary clothing for seamen before voyage were not illegal "advances." *Swanson v. Torrey*, C.C.A. Va.1923, 25 F.2d 835.

Time charter did not make charterer "owner pro hac vice," so as to defeat his right to liens for advances. *The Fort Gaines*, D.C.Md.1923, 24 F.2d 433.

Advances of clothing contrary to this section did not invalidate contract for seamen's service. *The Ella Pierce Thurlow*, D.C.Va.1926, 18 F.2d 675.

An advance payment of wages to seamen, made upon their employment for the purpose of reimbursing a boarding house keeper, is illegal under this section. *The Elizabeth Maersk*, D.C.La.1919, 258 F. 765.

The advance payment of wages to a seaman, in violation of this section, does not render the contract for service made

Note 3

by the shipping articles void, under section 578 of this title, where it is not shown that the unlawful payment entered into the contract as one of the things agreed on by the parties. *The Bound Brook*, D.C.Mass.1906, 146 F. 160.

Where, libellant, a citizen of the United States, signed as a seaman on a German vessel before the German consul at the port of New York for a voyage to Japan, and was paid a month's wages in advance, in violation of this section, when the vessel reached a Pacific port of the United States, he left it without the consent of the master, and brought suit in a court of admiralty to recover his wages for the time served, the contract, having been signed in violation of this section, was void, and he never became legally a member of the crew; for the same reason he had the right to leave the vessel at any time, and was entitled under this section, to recover wages for the full times served, without deduction on account of the advance payment. *The Neck*, D.C.Wash.1905, 138 F. 144.

Under section 578 of this title, providing that all shipments of seamen made contrary to any act of Congress shall be void, and any seaman so shipped may leave the service at any time, a contract for service on a British ship, made in an American port, by which the seamen were paid a month's wages, in advance, in violation of this section is void, and he may leave the service at any time, and recover full wages for the time served, without deduction on account of the advance. *The Troop*, D.C.Wash.1902, 117 F. 537, affirmed 125 F. 672, 60 C.C.A. 362.

Under this section and sections 596 and 644 of this title a payment made to a seaman of wages not then earned, or one made on the termination of a voyage, but not in the presence of a commissioner, cannot be shown in defense to a libel by the seaman to recover wages shown to have been earned. *The Alexander M. Lawrence*, D.C.Ala.1900, 101 F. 135.

The prohibition of this section extends to indirect as well as direct payments, and the section cannot be evaded by merely having the seamen sign fictitious shipping articles, which do not express the rate of wages actually agreed upon and intended to be paid for the voyage. *The Samuel E. Spring*, D.C.Mass.1886, 27 F. 764.

4. Allotments

Court could not ignore requirement of Greek law that taxes be deducted from

wages of Greek seamen serving on vessel flying Greek flag and subject to Greek jurisdiction. *Korthinos v. Niarchos*, C. A.Va.1950, 184 F.2d 716, certiorari denied 71 S.Ct. 612, 2 mems., 341 U.S. 905, 95 L.Ed. 1343.

Under former provisions of this section permitting allotments to creditors, penalty applied only to false statements made for purpose of establishing a claim against an allotment of wages made by a stipulation, and had no reference to false claims against seamen generally. *U. S. v. Nelson*, D.C.Ala.1900, 100 F. 125.

The amendment of section 563 of this title, providing that item No. 8 should be omitted from section 564 of this title, in its applicability to the agreement to be made between the master and each seaman, did not affect the right to make an allotment under the conditions prescribed by this section, in other words, it does not repeal it by implication. *The J. D. Peters*, D.C.Cal.1896, 78 F. 370.

Provisions of a Greek departmental order concerning payment of war bonuses to seamen on Greek ships, and providing that recipient of bonus might be a member of seaman's family or anyone else in Greece, did not require Greek seamen, who claimed a war bonus for services on Greek steamer on voyage to Ireland and return to a United States port, to make an allotment of amounts payable, contrary to this section, and the order was not contrary to policy of the section. *The Leonidas*, D.C.Md.1940, 32 F. Supp. 738, reversed on other grounds 116 F.2d 440.

Under this section permitting seamen to stipulate in shipping agreement for "allotment" of portion of wages to members of family if in writing and signed by and approved by shipping commissioner, quoted word would not include request by seaman that money delivered to master by seaman be sent to family in another country. *Neapolidis v. Theofana Maritime Co.*, 1951, 63 S.E.2d 795, 192 Va. 90, certiorari denied 72 S.Ct. 36, 342 U.S. 831, 96 L.Ed. 629.

5. Seamen within section

Seamen shipping in an American port on a foreign vessel engaged in foreign commerce are within the protection of this section making it a misdemeanor to pay any seaman wages in advance, and providing that advance payment shall not absolve the vessel or its master or owner from full payment of wages actually earned. *Patterson v. The Eudora*, Pa.1903, 23 S.Ct. 821, 190 U.S. 169, 47 L.Ed. 1002.

This section applies to seamen shipped on a foreign vessel in an American port. *Id.*

Under section 597 of this title, and in view of this section, a seaman on foreign vessel who has earned wages while vessel was in port of the United States is entitled on demand to one-half of such wages, though master has already paid him more than one-half of all wages earned while on the voyage. *The Ixion*, D.C.Wash.1916, 237 F. 142.

A court of admiralty is without jurisdiction of a suit against a German vessel to recover wages, brought by seamen who are not citizens of the United States, but who signed before a German consul in a port thereof and were discharged in another port after completing their term of service without objection; and such jurisdiction is not conferred merely by the fact that they were paid wages in advance, in violation of this section. *The Bound Brook*, D.C.Mass.1906, 146 F. 160.

Article 13 of the treaty of December 11, 1871, between the German Empire and the United States, 17 Stat. 923, which gives the consular officers of each country exclusive power to determine differences between the captains and crews of vessels of their own nation, and prohibits the courts of the other country from interfering therein, does not exempt a German vessel employing seamen in a port of this country from the obligation to observe this section, nor does it deprive the admiralty courts of the United States of jurisdiction to determine the rights of an American seaman who enters and leaves the service of a German vessel within this country. *The Neck*, D.C.Wash.1905, 138 F. 144.

Subsection (a) of this section is applicable to a case of the shipment of seamen on a British vessel in an American port; and by virtue of section 578 of this title, such seamen, to whom an advance was made on signing the articles, may leave the service at any time, and recover wages for the time served, and their right is not affected by their waiver of any claim to recover the sums advanced. *The Alnwick*, D.C.N.Y.1904, 132 F. 117.

This section applies to contracts made by seamen in ports of the United States for service on foreign vessels. *Kenney v. Blake*, Wash.1903, 125 F. 672, 60 C.C. A. 362.

This section as enacted originally, and the amendments thereto, apply only to Americans, but to all Americans whose avocation is that of mariner, whether

shipping on domestic or foreign vessels. *U. S. v. Nelson*, D.C.Ala.1900, 100 F. 125.

The provisions of this section extend to French captains who hire French sailors in the ports of the United States. 1885, 18 Op.Atty.Gen. 253.

The section does not apply to seamen employed in foreign vessels. *Levinshon v. Edwards*, 1885, 79 Ala. 293.

6. Vessels within section

Where Greek vessel deducted advances to seamen in the United States in violation of statute and there were settlements made while the vessel was in the territorial waters of the United States in which such illegal advances were deducted in violation of the same statute and the vessel was in the waters of the United States at time suit was instituted by seamen and the alleged balance due on wages after the advances had been deducted was paid into court for libelants, the District Court had jurisdiction notwithstanding the fact that the seamen were discharged in Barcelona, Spain, and were not present in United States when suit was commenced in their behalf. *Heros v. Cockinos*, C.A.Va.1949, 177 F.2d 570.

A Greek ship which while in our ports had violated our laws with respect to the payment of wages to seamen should not be allowed to invoke the provisions of the Consular Convention of 1902 in order to defeat enforcement of the laws that have been violated. *Id.*

Sponge boats are "fishing boats" within the last sentence of par. (f) of this section, and hence advances may be made to crew members of such boats. *Pavlis v. Jackson*, C.C.Fla.1942, 131 F.2d 362, certiorari denied 63 S.Ct. 761, 318 U.S. 769, 87 L.Ed. 1140.

Congress has power to prohibit advances from wages to seamen while a foreign vessel is within an American port. *The Belgier*, D.C.N.Y.1917, 246 F. 966.

This section is applicable by analogy to a vessel which sails from a port of the United States to a port in Alaska. *The J. D. Peters*, D.C.Cal.1896, 78 F. 368.

This section must be construed as applying to the trade between the western coast and the ports of British Columbia, especially in view of the fact that for more than six years this construction has been adopted by the secretary in the regulations prescribed by him. *Martial v. The Eclipse*, D.C.Cal.1892, 53 F. 273, affirmed 60 F. 105, 8 C.C.A. 505.

Note 6

This section does not apply to steamboats engaged in trade and navigating the inland waters of the United States. *U. S. v. King*, C.C.Ala.1885, 23 F. 138.

Foreign ports

Advances to seamen made by the master of an American vessel in a South American port are not affected by this section. *Neilson v. Rhine Shipping Co.*, N.Y.1918, 39 S.Ct. 89, 248 U.S. 205, 63 L.Ed. 208.

"The District Court decided in favor of the libelants. 244 F. 833. The Circuit Court of Appeals reversed the decrees. 250 F. 180. The cases are here on writ of certiorari.

"The section of the statute is the same as that involved in the case of *The Talus* [Sandberg v. McDonald], No. 392, ante, 185. The difference is that the advances were made by the master of an American vessel in a South American port, whereas in *The Talus* the advancements were made to foreign seamen in a British port. The same general considerations as to the interpretation of the statute which controlled in the decision of the case of *The Talus* are applicable here and need not be repeated.

"That American vessels might be controlled by congressional legislation as to contracts made in foreign ports may, for present purposes at least, be conceded. It appears that only by compliance with the local custom of obtaining seamen through agents can American vessels obtain seamen in South American ports. This is greatly to be deplored, and the custom is one which works much hardship to a worthy class. But we are unable to discover that in passing this statute Congress intended to place American shipping at the great disadvantage of this inability to obtain seamen when compared with the vessels of other nations which are manned by complying with local usage.

"The statute itself denies clearance papers to vessels violating its terms. This provision could only apply to domestic ports and is another evidence of the intent of Congress to legislate as to advances made in our own ports." *Id.*

This section does not apply to advancements by foreign vessels in foreign ports. *Sandberg v. McDonald*, Ala.1918, 39 S.Ct. 86, 248 U.S. 185, 63 L.Ed. 200. See, also, *Jackson v. The Archimedes*, N.Y.1928, 48 S.Ct. 184, 275 U.S. 463, 72 L.Ed. 374; *The Archimedes*, D.C.N.Y.1925, 10 F.2d 234; *The Pinna*, D.C.La.1918, 252 F. 203; *The Belgier*, D.C.N.Y.1917, 246 F. 966.

That this section declares the master and owner of any foreign ship violating the section liable to the same penalty that the master or owner of a vessel of the United States would be, strengthens the presumption that it was intended to deal only with acts committed within the jurisdiction of the United States. *Sandberg v. McDonald*, Ala.1918, 39 S.Ct. 84, 248 U.S. 185, 63 L.Ed. 200.

Congress had power to apply this section to a foreign vessel in a foreign port. *The Elizabeth Maersk*, D.C.La.1919, 258 F. 765.

While Congress may possibly make acts done by American shipmasters within a foreign jurisdiction criminal, though legal by the laws of the port where the acts are committed, such an intention is not to be presumed from general language merely, which may be fully satisfied by its application within the jurisdiction of the United States, but should be inferred only from specific indications of an intention to include acts done in foreign territory. *The State of Maine*, D.C.N.Y.1884, 22 F. 734.

This section indicates an intention to exclude from its operation shipments of seamen in foreign ports. *Id.*

The final clause of this section as originally enacted furnishes a specific indication that Congress did not in this section refer to the shipment of seamen in foreign ports, but had in view acts done in this country alone, and as the intent of the section is clear to make no distinction between foreign and domestic vessels, and as the section as to foreign vessels cannot be applied as regards their acts done in foreign ports, the whole section must be deemed intended to apply to the ports of this country only. *Id.*

8. Assignee of note for wages

The fact that the master of a vessel took possession of notes given by seamen to a boarding house keeper after the signing of shipping articles, and held the same with the intention of paying them on the discharge of the seamen, if on inquiry it was found to be legal, did not constitute a violation of this section, nor render the shipment void so as to entitle the seamen to quit before the expiration of the term under section 578 of this title, where the amount was not charged to the seamen nor any agreement made to pay the notes. *The Albani*, D.C.Pa.1909, 169 F. 220.

The owners of a fund derived from sale of a vessel cannot urge, as against

the assignee of an advance note to seaman for a month's wages, the wages having thereafter been earned, and not paid, the rule, made for benefit of seamen, that the assignee of such a note cannot recover thereon. *The Stagbound and The Gamecock*, D.C.Or.1899, 97 F. 973.

Earlier decisions, see *Duncan v. Shaw*, D.C.N.Y.1884, 19 F. 521; *Greefe v. Cortis*, D.C.N.Y.1882, 13 F. 299; *Smith v. Pendergast*, D.C.N.Y.1882, Fed.Cas.No.13,090a; *James v. Hagar*, N.Y.1886, 1 Daly 517; *Woodside v. Pender*, N.Y.1854, 2 E.D. Smith 390; *Backman v. Hanson*, N.Y.1854, 2 E.D.Smith 391; *Fogg v. Sinclair*, 1850, 59 Mass. 478, 5 Cush. 478; *Brown v. Collins*, S.C.1837, Riley 253; *Martin v. Schouboe*, S.C.1836, Riley 240; *Behncke v. King*, Pa.1822, 9 Serg. & R. 151.

9. Custom

This section does not apply to advances by an American ship in a foreign port in accordance with local custom to seamen there employed. *Nelson v. Rhine Shipping Co.*, 1818, 39 S.Ct. 89, 248 U.S. 205, 63 L.Ed. 208.

Where it was customary to charge seamen with interest and insurance on advances on account of wages, etc., as an indemnity to owners in case of loss, such seamen were not entitled to any part of the insurance paid the owners. *Roberts v. Swift*, D.C.Mass.1882, 18 F. 915.

A custom of a particular port that a seaman's advance wages, due under shipping articles, should be paid to the shipping agent, to be paid by him to the boarding house keeper bringing the seaman, for his benefit, was unreasonable, and not binding on the seaman, although known to him at the time of signing the articles, and, if valid, not sustained by evidence that the shipping agent paid the wages to the boarding house keeper, and charged them in account with the owner of the vessel. *Metcaif v. Weld*, 1859, 80 Mass. 210, 14 Gray 210.

10. Release of claim

A claim by a seaman under this section for the amount advanced to him before sailing is barred by a release of all claims, given after the voyage on receipt

ing payment of his wages, without deduction of the sum advanced. *The Samuel E. Spring*, D.C.Mass.1886, 27 F. 764.

11. Burden of proof

Respondent has the burden of showing that the shipping agent to whom the alleged payment in advance was made was authorized by libellant to receive it. *Holmes v. Dodge*, D.C.N.Y.1847, Fed.Cas. No.6,637.

12. Evidence

Wage accounts and portage bills relied on by trial court as evidence of amount of tax required by Greek government to be deducted from wages of seamen sustained finding as basis for such deduction. *Korthinos v. Niarchos*, C.A.Va. 1950, 184 F.2d 716, certiorari denied 71 S.Ct. 612, 2 mems, 341 U.S. 905, 95 L.Ed. 1343.

Where advances had been made by foreign vessel to seamen contrary to this section, and seamen filed cross-libels to recover amount of such advancements, the amount of such advances was relevant and vessel should be required to disclose the amount thereof since the privilege against self-incrimination had no application to the records of a vessel which were not private records of the person making them. *Korthinos v. The Niarchos*, C.A.Va.1949, 175 F.2d 730, rehearing denied 175 F.2d 734, certiorari denied 70 S.Ct. 241, 338 U.S. 894, 94 L.Ed. 550, rehearing denied 70 S.Ct. 345, 339 U.S. 934, 94 L.Ed. 579.

Evidence considered, and showed that the voyage for which a libellant signed as a seaman was to terminate in a foreign port, and that he was therefore rightfully discharged in such port, but that he was entitled to recover a sum deducted from his wages on account of an advance payment made by the master when libellant signed in an American port, in violation of this section. *The August Belmont*, D.C.Ga.1907, 153 F. 639.

The charges made on the shipping papers of advances to the seamen in the course of the voyage are not evidence until verified by the suppletory oath of the master. *The David Pratt*, D.C.Me. 1839, Fed.Cas.No.3,597.

§ 600. Agreements as to loss of lien or right to wages

No seaman shall, by any agreement other than is provided by title 53 of the Revised Statutes, forfeit his lien upon the ship, or be deprived of any remedy for the recovery of his wages to which he would otherwise have been entitled; and every stipulation in any

agreement inconsistent with any provision of title 53 of the Revised Statutes, and every stipulation by which any seaman consents to abandon his right to his wages in the case of the loss of the ship, or to abandon any right which he may have or obtain in the nature of salvage, shall be wholly inoperative. R.S. § 4535.

Historical Note

Derivation. Act June 7, 1872, c. 322, § 31, 17 Stat. 268.

References in Text. For distribution of title 53 of the Revised Statutes, re-

ferred to in the text, of which this section is a part, see note under section 543 of this title.

Cross References

Coastwise trade—

Application of this section to sail or steam vessels engaged in coastwise trade, see section 544 of this title.

Seamen on vessel in coastwise trade, etc., to receive wages as provided in this and enumerated sections, see section 563 of this title.

Notes of Decisions

Generally 1
Laches 2
Note or security 3
Particular agreements
Salvage claims 5

1. Generally

This section read in connection with R. S. § 4536, repealed, which was similar to section 601 of this title, protects seaman's wages from seizure on execution or attachment. *Wilden v. Inter-Island Steam Nav. Co.*, Hawaii 1908, 29 S.Ct. 58, 211 U.S. 239, 53 L.Ed. 164, 15 Ann.Cas. 127.

The provisions of a charter party cannot deprive a seaman of his right to a lien on the vessel for his wages. *The Gen. J. A. Dumont*, D.C.Va.1907, 158 F. 312.

A lien in favor of seamen on the cargo for the freight is not divested by a delivery of the property to one who made advances to the owners of the vessel in fitting her out and furnishing her with supplies before she set out on the voyage. *Whitney v. Tibbol*, Cal.1899, 98 F. 689, 35 C.C.A. 544.

Where seaman recovered a judgment at law for wages in a state court against a part owner, and attached and sold his interest in the vessel, subject to a certain mortgage, but did not obtain full satisfaction of their claim and purchaser bought in this mortgage, and subsequently became sole owner, the proceedings in the state court neither oper-

ated as a waiver of their lien nor a merger of their cause of action, and the lien could still be enforced against the vessel to the extent of the mortgage and the interests not before sold. *Tabor v. The Cerro Gordo*, D.C.Conn.1893, 54 F. 391.

The fact that the engineer of a steam dredge was aware of the charter at the time he was hired by the charterer did not deprive him of his lien for wages. *McNamara v. The Atlantic*, D.C.S.C.1893, 53 F. 607.

His standing by at a sheriff's sale of the vessel without giving notice of his claim does not prevent a sailor from afterwards enforcing his lien in admiralty against the vessel. *Crosby v. The Lillie*, D.C.Ala.1889, 40 F. 367.

It is the statutory policy to preserve the seaman's lien for wages against any implication of waiver by the fact that the seaman had knowledge that the vessel was chartered under an agreement by which the crew were to be paid by the charterers. *The L. L. Lamb*, D.C.Mich. 1887, 31 F. 29. See, also, *The International*, D.C.N.Y.1887, 30 F. 375; *The Samuel Ober*, D.C.Mass.1883, 15 F. 621; *The Schooner Montauk*, D.C.N.Y.1879, 10 Ben. 455, 17 Fed.Cas.No.9,717; *The Schooner Highlander*, D.C.Mass.1859, 1 Sprague 510, Fed.Cas.No.6,476; *The Gal-loway C. Morris*, C.C.Pa.1870, 2 Abb. 164, Fed.Cas.No.5,204; *The Erie*, D.C.Mass. 1859, 3 Ware 225, Fed.Cas.No.4,512, reversed on other grounds Fed.Cas.No.3,980; *The Clayton*, D.C.Ill.1870, 5 Biss. 162, Fed.Cas.No.2,870; *The Adelphi*, D.C. 1862, Fed.Cas.No.80.

If the master and owner know that the charterers are insolvent, and do not disclose that fact to the seamen at the time of engaging them for the charterers, the concealment is a fraud upon them, and any agreement to release the lien on the ship would be disregarded by the court. *The L. L. Lamb*, D.C.Mich.1887, 31 F. 29.

Clear proof of an agreement to rely upon personal credit alone is required to defeat the lien. *The Sirocco*, D.C.N.Y. 1881, 7 F. 599.

This section was intended to protect seamen against contracts which require a waiver of their rights as a condition of employment. *Squires v. The Ionian Leader*, D.C.N.J.1951, 100 F.Supp. 829.

Mere uncertainty or difficulty in calculation does not destroy right of maritime lien, since equity will provide the means for ascertainment of amounts. *Gayner v. The New Orleans*, D.C.Cal. 1944, 54 F.Supp. 25.

A seaman's lien is a property right given by law and arises wholly as result of services to a vessel, and does not arise out of voluntary agreement and cannot be contractually waived unless for a valid consideration. *Id.*

The provision of this section that no seaman shall be deprived of any remedy for the recovery of his wages by a provision inconsistent with the section is inapplicable to shipping articles made in a foreign port relating to a foreign vessel. *The Countess of Dufferin*, D.C.N.Y. 1878, Fed.Cas.No.3,280.

Lien will be waived by taking note from master, and nine months' delay. *The Bamard*, D.C.N.Y.1876, Fed.Cas.No. 831.

A mariner's lien will not be considered as waived by anything less than an express contract. *The Gate City*, D.C.Ill. 1872, Fed.Cas.No.5,267.

By the law maritime, a mariner, by an agreement understandingly made in a proper case, may waive his lien. *The Highlander*, D.C.Mass.1859, Fed.Cas.No.6, 476. See, also, *The Countess of Dufferin*, D.C.N.Y.1878, Fed.Cas.No.3,280.

Lien for wages was not destroyed by sale of vessel during seizure by customs officers. *Anderson v. The Solon*, D.C.Pa. 1836, Fed.Cas.No.363.

2. Laches

Master's claim of lien for wages, not sought to be enforced for five years, was barred by laches. *The Fort Gaines*, D.C. Md.1928, 24 F.2d 438.

Where the father and brother-in-law of a master and part owner of a vessel, who could reasonably be presumed to be acquainted with its financial condition, took no steps to enforce claims for services as mate and pilot, thus encouraging additional credit, they were precluded by laches from asserting claims more than six months old. *The Morning Star*, D.C.Wash.1924, 1 F.2d 410.

"The question of laches asserted by the intervening lien claimants other than seamen's wage claimants suggests the maxim 'sic utere tuo ut alienum non laedas' ('so use your own as not to injure another's property'). The vessel was making weekly trips between Seattle and Vancouver. Secret liens are not encouraged, except as they may be enforced in good conscience. While there is no fixed time applicable to all cases to constitute laches, the general rule is that liens, to retain priority, must be enforced with reasonable diligence. *The Young America*, D.C.N.Y.1887, 30 F. 789; *The J. W. Tucker*, D.C.N.Y.1884, 20 F. 129; *The Thomas Sherlock*, D.C.Ohio 1884, 22 F. 253. To permit relations of an owner of a ship, or persons familiar with the earning capacity of the vessel, to accumulate secret liens, encouraging credit for the vessel for any considerable time, would be very harmful to innocent third persons, and encourage injustice. Equity and good conscience clearly suggest a comparatively brief period of inactivity to constitute laches sufficient to postpone the prior liens in favor of other lienors." *Id.*

The statutes of the United States providing remedies for the collection of seamen's wages assume that they shall act promptly, and while no inflexible rule can be laid down to measure the time by lapse of which without action a claim may fairly be adjudged to be stale, but each case must be determined by its own circumstances, the general rule is that delay in enforcing such a claim after a reasonable opportunity to do so must be taken as a waiver of the right to a lien as against subsequent purchasers and incumbrancers in good faith without notice, unless the delay is satisfactorily explained. *The Oliver Ames*, D.C.Me.1910, 178 F. 740.

One who claimed to have a lien on a vessel for wages, but who had been a witness in, and was consequently chargeable with knowledge of, a controversy over her ownership, and the fact that the vessel was in custody pending such suit, but who held his claim back until after the delivery of the vessel in pursuance of the decree of the court in the

possessory action, by his delay waived his lien on the boat. *The Seminole*, D.C. N.Y.1890, 42 F. 924.

Where, the master of a steamboat, who was also manager of the company owning it, brought suit for the engineer's wages, in his absence, knowingly claiming less than was due, and wrote the engineer that he could afterwards sue for the remainder, the fact that, as a libellant, the engineer stood by it at a sheriff's sale of the boat without giving notice of his additional claim, does not discharge his lien therefor, it appearing that some stockholders of the original company were interested as purchasers, and the master as their agent bought in the vessel; and where such engineer, having removed to a different port, libeled the vessel on her first appearance there, although a year had elapsed, he had not lost his lien, where the delay caused no change for the worse to claimants. *The Lillie*, C.C.Fla.1890, 42 F. 237.

Lapse of time alone even if exceeding state statutory prescriptions is insufficient to establish laches as a matter of law so as to preclude enforcement of maritime lien. *Gayner v. The New Orleans*, D.C.Cal.1944, 54 F.Supp. 25.

Lien lost by unexplained delay of four years, where rights of bona fide purchasers intervened. *The Artisan*, D.C.N.Y.1876, Fed.Cas.No.567.

A seaman's lien for wages will not be enforced in admiralty, as against a bona fide purchaser, after the lapse of two seasons. *The Harriet Ann*, D.C.Ill.1874, Fed.Cas.No.6101.

The lien for wages is not lost by delay where no interests of third persons intervene. *The Canton*, D.C.Mass.1858, Fed.Cas.No.2388.

A tacit lien is lost or will be deemed waived by unreasonable delay in enforcing it, where the vessel has passed to a bona fide purchaser. *The Bolivar*, D.C.N.Y.1847, Fed.Cas.No.1,609.

The lien for wages will not be enforced, as against a bona fide purchaser, where the libel was delayed for many months, and the vessel was repeatedly in port, and her owner had advertised for claims against her. *Herbert v. The Amanda F. Myrick*, D.C.N.Y.1840, Fed.Cas.No.6395.

The fact that a vessel has made several voyages since the contract was terminated will not discharge the lien where the seaman exerted himself to follow the vessel, and commenced suit at the earliest moment. *Freeman v. The Jane*, D.C.Pa.1837, Fed.Cas.No.5,086.

Forbearance by seamen to libel their vessel at a port where they are discharged before the end of the voyage is not a waiver of their lien as against a subsequent bona fide purchaser. *The Mary*, C.C.N.Y.1822, Fed.Cas.No.9,186.

The lien on the vessel is lost where seamen, with knowledge of a libel filed by other members of the crew, failed to apply for their wages. *Trump v. The Thomas*, D.C.S.C.1796, Fed.Cas.No.14,206.

3. Note or security

The lien for wages is not lost by taking the owner's time note in settlement, where the circumstances rebut the presumption of payment. *The Helen M. Pierce*, D.C.Me.1877, Fed.Cas.No.6,332.

The taking of owner's time note operates as an extension of time of payment. *Id.*

A seaman's lien is not waived by receiving notes on settling attachment proceedings under state law, where they afterwards become worthless. *The Gate City*, D.C.Ill.1872, Fed.Cas.No.5,267.

Acceptance of nonnegotiable note of master on giving a receipt for wages, and putting the note in suit, do not waive the lien. *The Harriet*, D.C.Mass. 1842, Fed.Cas.No.6,098.

Negotiable note given for wages will not extinguish lien unless accompanied by additional security as compensation for renouncing lien. *The Betsy and Rhoda*, D.C.Me.1840, Fed.Cas.No.1,366.

The seaman does not lose his lien on the vessel by taking an order on the owner or charterer for the balance due at the close of the voyage. *The Eastern Star*, D.C.Me.1830, Fed.Cas.No.4,254.

4. Particular agreements

Where seaman released claim for wages with full knowledge of what he was doing and for an adequate consideration, the release discharged lien upon the ship as well as claim against owner personally, in absence of reservation of lien, though the release in form purported only to discharge owner. *Johnson v. Andrus*, C.C.A.Conn.1941, 119 F.2d 287.

Where seaman, asserting lien for wages against vessel in hands of vendee, gave vendor a release in full on receipt of balance of wages due, in reliance on vendee's promise to make good a check previously given for part of wages, but vendee's check was not made good, the release so given was not binding. *The S. W. Somers*, D.C.Md.1927, 22 F.2d 448.

Where the respondent having chartered his vessel for a fixed term, with

the right to nominate the captain and engineer, who were to be paid by the charterer, named the libellant as engineer, and, having explained to him fully the provisions of the charter, introduced him to the charterer, by whom he was employed, and no express reference was made to the question of lien, though the libellant understood that the charterer was to be his paymaster, seaman had a lien for his wages, there being no implied contract renouncing it. *The International*, D.C.N.Y.1887, 30 F. 375.

It seems that an express contract waiving the lien would be held void in admiralty unless there were some corresponding benefit to the seaman to sustain it. *Id.*

An injured seaman's release for \$225 of a fishing vessel and owner thereof from liability for the seaman's full share of the season's fish catch, worth over \$1500 plus reasonable cost of seaman's maintenance and cure amounting to \$189, was invalid as an "accord and satisfaction" in absence of showing that seaman fully understood at time of signing release what items he was being paid for or what the full extent of his rights was with respect to the several amounts due him, and that being so advised he specifically intended to accept the \$225 in full payment of all such sums due him. *The Montague*, D.C.Wash.1943, 53 F.Supp. 548.

The taking by a mate of an agreement from the master to share the profits in place of interest on money loaned will not prevent a lien for wages. *The Blohm*, D.C.N.Y.1867, Fed.Cas.No.1,556.

5. Salvage claims

A seaman, especially under this section, is not bound by a contract made

in advance with the master or owner that he will accept a fixed sum as his share in all cases of salvage. *Conekin v. Lockwood*, D.C.S.C.1916, 231 F. 541.

Where the master and crew of a tug were employed for the ordinary business of the towing company, when it authorized the tug to be sent out in stormy weather for the purpose of rescuing a vessel there arose an implied permission on the part of the owners to the crew to receive the usual proportion of the salvage award; and as, under this section, seamen are rendered incapable of releasing their right to participate in the award, they are entitled to their proportionate share, viz. one-third, after deducting costs. *Baker Salvage Co. v. The Taylor Dickson*, D.C.Va.1888, 40 F. 261.

The fact that a salvaging vessel was used in the wrecking business does not compel the inference that the monthly wages agreed to be paid the crew were to be in lieu of any share in any salvage reward to which otherwise they might become entitled. *The Cetewayo*, D.C.N.Y. 1881, 9 F. 717.

Owners cannot extinguish the salvage claims of seamen who have not appeared to claim their shares, by taking an assignment from them, but the amounts actually paid the seamen may be treated as paid on account of their shares and reimbursed to the owners, the residue of their shares to remain in the registry to await their application therefor. *The Adirondack*, D.C.N.Y.1880, 5 F. 213.

An assignment and release by a seaman, to the owners of the salvor vessel, of a claim for salvage, executed in ignorance of the facts, will not deprive him of his share. *The Edward Lee*, D.C. N.Y.1868, Fed.Cas.No.4,292.

§ 601. Attachment or arrestment of wages; support of seaman's wife

No wages due or accruing to any seaman or apprentice shall be subject to attachment or arrestment from any court, and every payment of wages to a seaman or apprentice shall be valid in law, notwithstanding any previous sale or assignment of wages or of any attachment, encumbrance, or arrestment thereon; and no assignment or sale of wages or of salvage made prior to the accruing thereof shall bind the party making the same, except such allotments as are authorized by this title. This section shall apply to fishermen employed on fishing vessels as well as to seamen: *Provided*, That nothing contained in this or any preceding section shall interfere with the order by any court regarding the payment by any seaman of

Note 1

any part of his wages for the support and maintenance of his wife and minor children. Mar. 4, 1915, c. 153, § 12, 38 Stat. 1169.

Historical Note

References in Text. Words "this title" in first sentence were so in original. Act Mar. 4, 1915, was not subdivided into titles, and section 12 thereof did not directly amend any section of the Revised Statutes. The term "this title" is therefore ambiguous, but was probably intended to refer to Title 53 of the Revised Statutes, for distribution of which, see note under section 543 of this title.

The preceding sections of Act Mar. 4, 1915, referred to in proviso of this section, affected sections 80, 569, 596, 597, 599, 656, 673, 701, 703, 712 and 713 of this title.

Prior Law. R.S. § 4536, which related to attachment of wages, was repealed by Act Mar. 4, 1915.

Notes of Decisions

Generally 4
 Assignments 10
 Attorney's fees and costs 14
 Coastwise trade, engagement in 8
 Constitutionality 2
 Costs 14
 Court order 6
 Deductions and set-offs 11
 Exceptions 12
 Execution 13
 Fishermen and fishing vessels 9
 Fishing vessels 9
 Judgment and execution 13
 Law governing 3
 Prior law 1
 Seamen within section 7
 Set-offs 11
 Wages 5

1. Prior law

Exemption of seamen's wages from attachment was repealed as to seamen in the coastwise trade by section 544 of this title. *Inter-Island Steam Nav. Co. v. Byrne, Hawaii 1915*, 38 S.Ct. 132, 239 U. S. 459, 60 L.Ed. 382.

Act Mar. 4, 1915, exempting wages of fishermen and all seamen from execution or attachment, repealed Act June 9, 1874 (see section 544 of this title), excepting seamen of coastwise trade from exemption given them by earlier Act June 7, 1872, c. 322, 17 Stat. 276, which was similar and prior to this section. *Manufacturers' Trust Co. v. Anderson, 1934*, 271 N.Y.S. 333, 241 App.Div. 843, certiorari dismissed 55 S.Ct. 208, 293 U.S. 531, 79 L.Ed. 640.

The inclusion, in 1926 United States Code, 1926, of section 544 of this title, rendering inapplicable the similar law enacted prior to this section exempting seamen's wages from garnishment, to wages of seamen engaged in coastwise

trade, as well as inclusion of 1915 statute, 38 Stat. 1164, re-enacting the prior law as this section did not have the effect of re-enacting section 544 since the Code was a mere compilation, *prima facie* setting out the laws as they then existed. *Waterman S. S. Corporation v. Brill, 1942*, 9 So.2d 23, 243 Ala. 25.

2. Constitutionality

This section was valid, since Congress has exclusive jurisdiction in maritime realm. *Michigan Furniture Co. v. Southern Pac. Co., 1936*, 287 N.Y.S. 178, 158 Misc. 781.

3. Law governing

Seamen's wages having been held subject to garnishee process in suit at common law in Massachusetts, such decision should be regarded as fixing the maritime law for the time being within that circuit, and the state court in attaching such wages should be held by comity to be acting within its jurisdiction under the local maritime law as there recognized; therefore, a compulsory payment under a judgment on garnishee process in the state court of Massachusetts made by the defendant prior to his answer in a cause in the Federal District Court should be deemed valid by comity, as well as under the United States constitution, and allowed the defendant as a credit against the libellant's claim. *The City of New Bedford, D.C.N.Y.1884*, 20 F. 57.

The provision of Laws 1949, c. 115, § 1, et seq. requiring withholding of tax from wages of seaman is not in conflict with this section prohibiting attachment or arrestment of wages of seaman. *Alaska S. S. Co. v. Mullaney, D.C.Alaska 1949*, 84 F.Supp. 561, affirmed 180 F.2d 805.

Income tax statute of Oregon, requiring employers of seamen doing busi-

ness in state to deduct and withhold a percentage of wages of seamen who are domiciliary or statutory residents of Oregon, and to pay the deducted and withheld amounts to State Tax Commission, is invalid as applied to seamen as providing for an "attachment" of wages of seamen prohibited under this section. *American Hawaiian S. S. Co. v. Fisher*, D.C.Or.1948, 82 F.Supp. 193.

4. Generally

Under section 596 of this title, and in view of the express provision of this section, that seamen's wages shall not be subject to attachment or arrest from any court, the service of trustee process from a state court is not "sufficient cause" for refusal to pay a seaman his wages, and does not protect the owner from liability for the additional payment required by section 596. *Burns v. Fred L. Davis Co.*, C.C.A.Mass.1921, 271 F. 439.

Seamen's wages are privileged in the matter of payment, and are not subject to the limitation of liability of ship-owners. *The Oliver Ames*, D.C.Me.1910, 178 F. 740.

Where a seaman's wages, exempt from attachment, have been paid over for a debt justly due under attachment proceedings in which the seaman, though properly served failed to claim exemption, a court of admiralty will not decree a second payment to the seaman himself. *Hitchcock v. The St. Louis*, D.C.Ky.1891, 48 F. 312.

In the absence of express legislation on the subject, a seaman's right to sue in the admiralty in personam for his wages is not taken away or suspended by an attachment of his wages by trustee process in suit at law. *Ross v. Bourne*, D.C.Mass.1883, 14 F. 853, affirmed 17 F. 703.

The wages of a seaman are not subject to attachment. *The John E. Holbrook*, D.C.N.Y.1874, Fed.Cas.No.7,339.

The Supreme Court of the United States is the final authority on construction of this section relating to exemption of seamen's wages. *Waterman S. S. Corporation v. Brill*, 1942, 9 So.2d 23, 243 Ala. 25.

5. Wages

This section is applicable to all wages earned by seamen, whatever the nature of the voyage. *The St. Louis*, D.C.Ky. 1891, 48 F. 312.

Wages due one serving on a railroad ferryboat are protected by this section. *Id.*

Bonus payable to judgment debtor, a seaman, in addition to regular wages by reason of hazardous nature of voyage because vessel on which seaman was employed was engaged in carrying lend-lease supplies to Russia in time of war, was exempt from attachment under this section, and third party subpoena restraining employer from paying bonus to the seaman was vacated. *Modern Industrial Bank v. Kennedy*, 1942, 38 N.Y. S.2d 814, 179 Misc. 646.

6. Court order

On motion under Civil Practice Act N. Y. § 794, providing for order permitting or directing person indebted to pay debt to sheriff or judgment creditor, injunctive provisions of third-party subpoena would be vacated, where wages of seaman were involved, and judgment, although apparently for board and lodging of daughter of seaman, was not an "order by any court regarding the payment by any seaman of any part of his wages for the support of his wife and minor children" within this section. *Cunningham v. McCullough*, Misc.1940, 22 N.Y.S. 2d 739.

A judgment against seaman, apparently for board and lodging of daughter of seaman, is not an "order by any court regarding the payment by any seaman of any part of his wages for the support of his wife and minor children" within this section, since section refers to orders such as may be made in matrimonial action or by court having jurisdiction to make similar orders, such as Domestic Relations Court of City of New York. *Id.*

An order for support of divorced wife and child of commercial fisherman on the high seas incorporated in divorce decree, and order of execution on wages of the fisherman for delinquent payments of support, constituted an "order by any court" within exception of this section, and exemption from execution was properly denied where allowance thereof would interfere with the support order. *Avilla v. Avilla*, 1947, 183 P.2d 668, 81 Cal.App.2d 210.

7. Seamen within section

Where this section, providing that no wages due or accruing to any seaman or apprentice shall be subject to attachment and section 713 of this title, defining master as every person having command of any ship and seaman as every person except apprentices employed or engaged on board ship, were derived from earlier statute and had not been materially changed they must be

Note 7

read together, and when so read they show that Congress intended to exclude masters from exemption granted "seamen," and hence the wages of a tug captain were not exempt from execution. *Blackton v. Gordon*, N.J.1938, 58 S.Ct. 417, 303 U.S. 19, 82 L.Ed. 683.

One who shipped for a fishing voyage, to be paid at the rate of \$25 for each 1,000 fish caught by him and \$1.50 per day for unloading, was not a "seaman," within the meaning of R.S. § 4536, repealed. *Telles v. Lynde*, D.C.Cal.1891, 47 F. 912.

Longshoreman employed to stow cargo in and discharge cargo from holds of defendant's coastwise steamships while lying in navigable waters was a "seaman" whose wages were exempt from garnishment. *Michigan Furniture Co. v. Southern Pac. Co.*, 1936, 287 N.Y.S. 178, 158 Misc. 781.

Wages of pilot were subject to garnishment, this section being inapplicable to him. *William Jackman Sons v. Hauffman*, 1935, 287 N.Y.S. 177, 159 Misc. 182.

Pilot is "seaman" within this section, and hence wages are exempt from garnishment. *Bloomington Bros., Inc. v. Butler*, 1934, 270 N.Y.S. 624, 150 Misc. 903.

Master of ship was "seaman" within this section. *Nessen Transp. Co. v. Larsen*, 1937, 7 N.E.2d 765, 290 Ill.App. 22.

8. Coastwise trade, engagement in

This section is applicable as well to a seaman operating on coastwise vessels as on merchant vessels generally, and hence it was no answer to a libel in admiralty against a tug engaged in the coasting trade for a seaman's wages earned thereon that the wages had been attached by garnishment. *The Amelia*, D.C.Ala.1910, 183 F. 899.

Under this section the wages earned by a seaman, in the coastwise trade of the United States, are not subject to garnishment at the instance of the creditor of the seaman in an action at law brought in a state court. *McCarty v. The City of New Bedford*, D.C.N.Y.1880, 4 F. 818.

Seaman employed on tugboat plying in and about Hudson River and in its branches, the North River and East River, was engaged in "coastwise trade," and his wages were therefore not exempt from execution. *Gordon v. Blackton*, 1936, 186 A. 689, 117 N.J.L. 40, affirmed 191 A. 761, 118 N.J.L. 159, affirmed 58 S.Ct. 417, 303 U.S. 91, 82 L.Ed. 683.

Under this section and section 544 of this title, wages of seamen engaged in ordinary coastwise trade are not subject to garnishment. *Waterman S. S. Corporation v. Brill*, 1942, 9 So.2d 23, 243 Ala. 25. See, also, *Migliaccio v. Cappola*, 1936, 289 N.Y.S. 891.

In view of section 544 of this title, the exemption given by this section does not apply to seamen engaged in coastwise trade. *Duggar v. Mobile & Gulf Nav. Co.*, 1932, 140 So. 614, 224 Ala. 359.

9. Fishermen and fishing vessels

The provision of Rev.Laws Mass. c. 189, § 31, authorizing seizure under trustee process of wages of fishermen, was void, as in contravention of this section. *Burns v. Fred L. Davis Co.*, C.C.A.Mass., 1921, 271 F. 439.

When the wages of a fisherman were to be paid "within" 30 days after the arrival of the vessel in port, they were not exempt from garnishment after arrival and before the expiration of that time. *Telles v. Lynde*, D.C.Cal.1891, 47 F. 912.

Where the wages of a fisherman had been garnished by a justice court for a debt justly due, and payment compelled from the vessel owners by proceedings in aid of execution, which they had in good faith resisted by all proper means, a court of admiralty would not compel them to again pay the amount to the fisherman, although the proceedings in the justice court were reversible for error. *Id.*

This section expressly provides that it shall apply to fishermen employed on fishing vessels, as well as to seamen; R.S. § 4536, repealed, contained no such provision, and it could not be construed to apply to fishermen. *Ross v. Bourne*, D.C.Mass.1883, 14 F. 858, affirmed 17 F. 703.

10. Assignments

A paper signed by a seaman at the time he was hired, reciting that the captain and owners of the vessel "will please pay to M." a certain sum, "to be paid when due for services as sailor on board the" vessel, "and to be charged to my account at the end of the voyage or when duly discharged from said vessel," said paper being signed in the presence of the captain, who told M. the money would be paid him after it was earned, is an assignment of wages prior to the accruing thereof, within this section, prohibiting the same. *The George W. Wells*, D.C.Mass.1902, 118 F. 761.

The assignee of a seaman's claim for wages has no lien. *The Clara A. McIntyre*, D.C.N.C.1899, 94 F. 552.

Persons employed as hunters for a sealing voyage, by the master, from whom they had purchased interests in the vessel, agreeing that half their wages might be applied to the purchase price, were within the protection of this section, forbidding the assignment of mariners' wages. *White v. The M. M. Morrill*, D.C.Wash.1897, 78 F. 509, affirmed 83 F. 215.

A lien for seaman's wages will be enforced in the hands of an assignee when there is no reason to question the fairness of the assignment. *The William M. Hoag*, D.C.Or.1895, 69 F. 742, affirmed 18 S.Ct. 112, 168 U.S. 437, 42 L.Ed. 533.

A claim for maritime wages is assignable, and the lien also passes by the assignment, so that the assignee is entitled to enforce such lien in his own name. *Mark v. The New Idea*, D.C.Miss. 1892, 60 F. 294.

An agreement by a pilot purchasing a share in a vessel that the co-owners shall retain yearly out of his wages such sum as he is able to spare until the balance of the purchase money is paid gives them no authority to apply his wages without his direction. *Somers v. The Jersey Blue*, D.C.N.J.1879, Fed.Cas.No.13,169.

Seamen's lien for wages does not pass to a shipping agent by reason of advances made to the seamen at the home port. *Seaver v. The Thales*, C.C.N.Y.1850, Fed.Cas.No.12,594.

The seaman's lien for wages is lost by an assignment of his claim. *Patchin v. The A. D. Patchin*, D.C.N.Y.1850, Fed.Cas.No.10,794. See, also, *Logan v. The Æolian*, D.C.Ohio 1859, Fed.Cas.No.8,465, modified on other grounds Fed.Cas.No.4,504.

An assignment by libellant, for bona fide consideration, of his claim for wages, is a good defense. *Bibbins v. The Citizen*, D.C.N.Y.1847, Fed.Cas.No.1,384a.

11. Deductions and set-offs

Only such deductions and set-offs for derelictions in performance of seaman's duties as are recognized in the statutes shall be allowed against his wages, and collection of other claims against seaman must be sought through other means. *Isbrandtsen Co. v. Johnson*, Pa. 1952, 72 S.Ct. 1011, 343 U.S. 779, 96 L.Ed. 1294.

Special army court-martial fine against seaman on merchant vessel of the United

States for violation of article of war could not be set off against seaman's claim for wages. *Shilman v. U. S.*, C.C. A.N.Y.1947, 164 F.2d 649, certiorari denied 68 S.Ct. 608, 333 U.S. 837, 92 L.Ed. 1122.

12. Exceptions

Alimony judgment, constituting judicial recognition of husband's duty to support, is excepted from exemption even when there is no specific exception to that effect recited in this section. *Mickenheim v. Cathcart*, La.1955, 71 So.2d 575, appeal transferred 84 So.2d 449, 228 La. 890, 54 A.L.R.2d 1418.

13. Judgment and execution

Seamen's wages are protected from seizure after judgment by attachment or proceedings in aid of execution by this section. *Wilder v. Inter-Island Steam Nav. Co.*, Hawaii 1908, 29 S.Ct. 58, 211 U.S. 239, 53 L.Ed. 164, 15 Ann.Cas. 127.

Neither the general maritime law nor this section exempts wages due a seaman from seizure under an execution issued on a valid judgment against him in a state court; and a satisfaction of such execution by the employer, as authorized by the state laws, is a good defense to a subsequent action by the seaman to recover the amount. *The Queen*, D.C.Cal.1899, 93 F. 834.

The provision of this section that "no wages due or accruing to any seaman or apprentice shall be subject to attachment or arrestment," does not apply where an execution, issued in an action against a person claiming to be a seaman, is served upon the owners of the vessel, and payment is enforced from them by an order made in proceedings supplemental to execution. *Telles v. Lynde*, D.C.Cal.1891, 47 F. 912.

14. Attorney's fees and costs

When the seaman's admiralty proceeding was begun before a United States commissioner prior to a justice's judgment in garnishment, and the garnishee had actual notice thereof before that time, it was the latter's duty to call the justice's attention to that proceeding, and because of its failure to do so it will be charged with the costs thereof. *The St. Louis*, D.C.Ky.1891, 48 F. 312.

Exemption, pursuant to this section, of seaman's wages from attachment or arrestment did not apply to seaman's wife's demand for attorneys' fees and costs required to be expended by wife in obtaining award for support and maintenance of herself and child, but did apply to at-

torneys' fee and costs incidental to securing of wife's judgment of separation from bed and board. *Mickenheim v.*

Cathcart, La.1955, 71 So.2d 575, appeal transferred 84 So.2d 449, 228 La. 890, 54 A.L.R.2d 1418.

§ 602. Limit of sum recoverable during voyage

No sum exceeding \$1 shall be recoverable from any seaman, by any one person, for any debt contracted during the time such seaman shall actually belong to any vessel, until the voyage for which such seaman engaged shall be ended. R.S. § 4537.

Historical Note

Derivation. Act July 20, 1790, c. 29, § 4, 1 Stat. 133.

Notes of Decisions

1. Evidence

For a seaman, defending against an action on the ground that the debt for which he is sued was contracted during the time he belonged to a vessel, and con-

sequently was not recoverable till the close of the voyage, the shipping paper is the proper evidence as to the time when he engaged. *Reynard v. Brecknell*, 1826, 21 Mass. 302, 4 Pick. 302.

§ 603. Summons for nonpayment

Whenever the wages of any seaman are not paid within ten days after the time when the same ought to be paid according to the provisions of title 53 of the Revised Statutes, or any dispute arises between the master and seamen touching wages, the district judge for the judicial district where the vessel is, or in case his residence be more than three miles from the place, or he be absent from the place of his residence, then, any judge or justice of the peace, or any United States commissioner, may summon the master of such vessel to appear before him, to show cause why process should not issue against such vessel, her tackle, apparel, and furniture, according to the course of admiralty courts, to answer for the wages. R.S. § 4546; May 28, 1896, c. 252, § 19, 29 Stat. 184; Mar. 2, 1901, c. 814, 31 Stat. 956.

Historical Note

Derivation. Acts July 20, 1790, c. 29, § 4, 1 Stat. 133; Aug. 23, 1842, c. 188, § 1, 5 Stat. 517.

References in Text. For distribution of title 53 of the Revised Statutes, referred to in the text, of which this section is a part, see note under section 543 of this title.

Codification. R.S. § 4546 as enacted originally referred to "any commission-

er of a circuit court." By Act May 23, 1896, as amended by Act Mar. 2, 1901, the office of commissioner of the circuit court was abolished, provision was made for the appointment, by the district courts, of United States commissioners, and all Acts applicable to commissioners of the Circuit Court, except as to appointment and fees, were made applicable to United States commissioners.

Cross References

Application of section to vessels in coastwise trade, etc., see section 563 of this title.

Seamen's rights generally, in Courts of the United States, see section 1916 of Title 28, Judiciary and Judicial Procedure.

Notes of Decisions

Generally 1
 Appearance 5
 Jurisdiction 6
 Summons 4
 Time to sue 3
 Vessels under section 2

1. Generally

The remedy in admiralty is confined to such cases as ordinarily belongs to cognizance of admiralty such as maritime contracts for wages, and does not confer any new jurisdiction. *The Thomas Jefferson*, Ky.1825, 23 U.S. 428, 10 Wheat. 428, 6 L.Ed. 358.

Under section 596 of this title, where seamen were discharged, and payment of wages refused, they were entitled to libel the vessel at once therefor, without instituting proceedings under this section and section 604 of this title, which are permissive only. *The Elihu Thompson*, D.C.Wash.1905, 139 F. 89.

This section affords a cumulative, not an exclusive, remedy, it is permissive, not imperative, and does not prevent a seaman from maintaining an action at common law for wages or having immediate process out of any court having admiralty jurisdiction. *The Shelbourne*, D.C.Ala.1887, 30 F. 510.

The remedy is cumulative and not exclusive, and notwithstanding these provisions the courts of admiralty remain open to seamen for the usual process in rem against the vessel whenever they prefer to pursue that course. *The Frank C. Barker*, D.C.N.J.1884, 19 F. 332. See, also, *The Schooner Edwin Post*, D.C.Del. 1881, 6 F. 206; *Murray v. Ferry-Boat F. B. Nimick*, D.C.Pa.1880, 2 F. 86; *The Ship William Jarvis*, D.C.Mass.1859, 1 Sprague 485, Fed.Cas.No.17,697; *The Waverly*, D.C.Wis.1877, 7 Biss. 465, Fed.Cas.No.17,301; *The M. W. Wright*, D.C.Mich.1871, 1 Brown Adm. 290, Fed.Cas.No.9,983.

The effect of this and section 604 of this title, relating to proceedings by a mariner to recover his wages, is at most to restrain a proceeding in rem against the vessel before the expiration of 10 days after the wages are due. *The Edwin Post*, D.C.Del.1881, 6 F. 206.

Where a seaman's employer holds his wages on ground that seaman has allegedly deserted, seaman can bring a suit in admiralty for his wages, but is not limited to such a suit, and can

raise a question in any proceeding lawfully instituted with respect to such wages. In re *Zanicki*, D.C.Mass.1946, 65 F.Supp. 447.

A seaman whose wages have been retained by his employer on ground that he has allegedly deserted, can raise question of forfeiture of wages not merely by asserting a claim against the vessel, but also asserting an in rem claim to balance which master has set aside and paid over by way of the Shipping Commissioner to the registry of court. Id.

This section does not affect seaman's right to proceed in personam. *Freeman v. Baker*, D.C.N.Y.1833, Fed.Cas.No.5,084. See, also, *The William Jarvis*, D.C.Mass. 1859, Fed.Cas.No.17,697; *The Susan*, D.C.Me.1859, Fed.Cas.No.13,631; *Francis v. Bassett*, D.C.Mass.1842, Fed.Cas.No.5,037; *The Commerce*, D.C.Mass.1842, Fed.Cas.No.3,054.

The lien of seamen on freight for wages is not taken away by this section allowing process against the vessel. *Poland v. The Spartan*, D.C.Me.1828, Fed.Cas.No.11,246.

2. Vessels under section

The vessel against which process is sought on complaint for wages under this section and section 604 of this title must be within the district at the time of hearing. *The Rockie E. Yates*, D.C.Me.1880, Fed.Cas.No.11,980a.

The provisions of this section and section 604 of this title apply only to merchant ships and their masters and crews. *The Grace Darling*, D.C.Me.1878, Fed.Cas.No.5,651.

This section with respect to the recovery of wages, applies only to vessels bound from a port in the United States to a foreign port and from a port in one state to a port in any other than an adjoining state, the classes of vessels enumerated in sections 574 and 575 of this title. *The M. W. Wright*, D.C.Mich.1871, Fed.Cas.No.9,983.

3. Time to sue

The filing of a libel for wages, after the master has announced his determination to sail for a port unauthorized by the shipping articles, and after the seamen have, in consequence, demanded their wages, is not premature, although they continue at work for several hours longer, and until the vessel is about to

proceed to sea. *Heinrici v. The Laura Madsen*, D.C.Cal.1897, 84 F. 362.

A complaint by a seaman under this and the following section must show that 10 days have elapsed after the wages were payable, or that a dispute has arisen between the master and seamen touching the same. *The Rockie E. Yates*, D.C.Me.1880, Fed.Cas.No.11,980a.

The 10 days' exemption from arrest of a ship, under this and the following section, is waived by appearance, claim, and answer, without protest, after that time has elapsed. *The Grace Darling*, D.C.Me.1878, Fed.Cas.No.5,651.

A voyage is ended and a seaman's wages become due when the vessel is moored at her final port of destination, and if wages are not paid within 10 days thereafter, the seaman is entitled to admiralty process against the vessel. *The Annie M. Smull*, D.C.Or.1872, Fed.Cas.No.423.

A seaman is not bound to stay by the ship after her arrival at the final port of destination, and assist in discharging her cargo, unless the shipping articles contain a contract to that effect, or the established custom of the port requires it. Id.

Under this section a libel in rem for wages, brought within 10 days after discharge of cargo at the last port of delivery, will be dismissed as premature. *The David Faust*, D.C.N.Y.1867, Fed.Cas.No.3,595.

The seaman may sue the vessel for his wages within the 10 days after the right to wages has accrued, where the vessel has departed from the port of her discharge, or is about to. *The William Jarvis*, D.C.Mass.1859, Fed.Cas.No.17,697.

The seaman cannot sue until 10 days after the discharge of the cargo have elapsed, unless there be a dispute as to wages. *The Eagle*, D.C.N.Y.1846, Fed.Cas.No.4,233. See, also, *The William Jarvis*, D.C.Mass.1859, Fed.Cas.No.17,697.

A demand of wages, and a refusal by the owner to pay till after 10 days, do not constitute a dispute, within this section, so as to authorize process in rem before the expiration of the 10 days. *The Commerce*, D.C.Mass.1842, Fed.Cas.No.3,054.

Where suit had been brought against a vessel by summons or citation before the ten days had expired, and the master of the vessel had neglected to appear upon such summons and show cause, and proceedings were taken by default against the vessel, the claimants were

not bound to answer in bar of the suit, and that it had been prematurely brought. *Hill v. The Triumph*, D.C.N.Y.1841, Fed.Cas.No.6,500.

Wages are due immediately on voluntary discharge, and if not paid within 10 days thereafter, the seamen may sue in rem. *The Mary*, D.C.Me.1883, Fed.Cas.No.9,191.

A libel will not be dismissed where action brought prematurely becomes perfected before stipulations and answer of respondent are filed. *Granon v. Hartshorne*, D.C.N.Y.1834, Fed.Cas.No.5,689.

A stipulation that seamen shall not sue for wages until the vessel is unladen, if fairly made, is binding upon them. Id.

An action for wages earned on a previous voyage may be instituted before the vessel is discharged of her cargo at the return port. *The Edward*, D.C.N.Y.1832, Fed.Cas.No.4,289.

An objection that the suit is brought before the cargo is discharged is waived by appearing and contesting the claim on the merits. Id.

Under Act July 20, 1790, § 6, 1 Stat. 133, on which this section was based, in order that admiralty process might issue within ten days after the arrival of the vessel it was sufficient to show a reasonable ground of belief that the vessel was about to proceed to sea within the ten days. *The Trial*, D.C.N.Y.1830, 1 Blatchf. & H. Adm. 94, Fed.Cas.No.14,170.

A libel for wages brought before the wages are due must be dismissed, if duly excepted to on that ground, though the right is perfected in the meantime. *The Martha*, D.C.N.Y.1830, Fed.Cas.No.9,144.

A discharge, actual or constructive, entitles the seaman to sue for wages at once. *The Cadmus v. Matthews*, C.C.N.Y.1830, Fed.Cas.No.2,282. See, also, *Freeman v. Baker*, D.C.N.Y.1833, Fed.Cas.No.5,084; *The David Faust*, D.C.N.Y.1867, Fed.Cas.No.3,595; *Collins v. Nickerson*, D.C.Mass.1846, Fed.Cas.No.3,016; *The Cabot*, D.C.N.Y.1848, Fed.Cas.No.2,277.

A seaman cannot sue in rem for wages in the port of delivery until 10 days after the cargo is discharged, unless the vessel is about to proceed to sea. *The Cypress*, D.C.N.Y.1829, Fed.Cas.No.3,530. See, also, *The William Jarvis*, D.C.Mass.1859, Fed.Cas.No.17,697; *The Trial*, D.C.N.Y.1830, Fed.Cas.No.14,170.

The right to resort to the vessel for wages is not consummated until the le-

gal dissolution of the seaman's connection with the vessel. The *Cypress*, D.C. N.Y.1829, Fed.Cas.No.3,530. See, also, The *Warrington*, D.C.N.Y.1832, Fed.Cas.No.17,208; The *Swallow*, D.C.N.Y.1843, Fed.Cas.No.13,664; *Jelly v. Tiddeman*, D.C.N.Y. 1848, Fed.Cas.No.7,256a.

A stipulation in the articles that the seamen shall not in any case demand their wages until the expiration of a certain time, is void in case the service is completed or the seamen are discharged before the expiration of that time. The *Cypress*, D.C.N.Y.1829, 1 *Blatchf. & H. Adm.* 83, Fed.Cas.No.3,530.

When the 10 days commenced to run, after which seamen may sue for wages. *Holmes v. Bradshaw*, Fed.Cas.No.6,635.

4. Summons

The omission of the summons to the master of the vessel to show cause, etc., is an error of practice which may be waived by claimant by delay in taking advantage of it. *Robinson v. The Lillie Mills*, D.C.N.Y.1859, Fed.Cas.No.11,958.

5. Appearance

On an application for process in rem against a vessel for seaman's wages, the master may appear by attorney before the magistrate in defense of the claim. *The Rockie E. Yates*, D.C.Me.1880, Fed.Cas.No.11,980a.

6. Jurisdiction

In the absence of the district judge from his place of residence, where the same is within three miles of the place where a vessel is moored, the jurisdiction conferred upon him may be exercised by a United States commissioner. *The Jefferson Borden*, D.C.Del.1881, 6 F. 801.

Commissioner should satisfy himself of the absence of the district judge from his place of residence; and, having once assumed jurisdiction, the court will not go behind his certificate of "probable cause," but will assume that, as he is acting as a public officer, the principle "*Omnia præsumentur esse acta rite*," will apply to his conduct, and that he has not usurped jurisdiction that does not belong to him. *Id.*

§ 604. Libel for wages

If the master against whom such summons is issued neglects to appear, or, appearing, does not show that the wages are paid or otherwise satisfied or forfeited, and if the matter in dispute is not forthwith settled, the judge or justice or United States commissioner shall certify to the clerk of the district court that there is sufficient cause of complaint whereon to found admiralty process; and thereupon the clerk of such court shall issue process against the vessel. In all cases where the matter in demand does not exceed \$100 the return day of the monition or citation shall be the first day of a stated or special session of court next succeeding the third day after the service of the monition or citation, and on the return of process in open court, duly served, either party may proceed therein to proofs and hearing without other notice, and final judgment shall be given according to the usual course of admiralty courts in such cases. In such suits all the seamen having cause of complaint of the like kind against the same vessel may be joined as complainants, and it shall be incumbent on the master to produce the contract and log book, if required to ascertain any matter in dispute; otherwise the complainants shall be permitted to state the contents thereof, and the burden of proof of the contrary shall be on the master. But nothing herein contained shall prevent any seaman from maintaining any action at common law for the recovery of his wages, or having immediate process out of any court having admiralty jurisdiction wherever any vessel may be found, in case she shall have left the

Note 1

port of delivery where her voyage ended before payment of the wages, or in case she shall be about to proceed to sea before the end of the ten days next after the day when such wages are due, in accordance with section 596 of this title. This section shall not apply to fishing or whaling vessels or yachts. R.S. § 4547; May 28, 1896, c. 252, § 19, 29 Stat. 184; Dec. 21, 1898, c. 28, §§ 6, 26, 30 Stat. 756, 764; Mar. 2, 1901, c. 814, 31 Stat. 956.

Historical Note

Derivation. Acts July 20, 1790, c. 29, § 6, 1 Stat. 133; Aug. 23, 1842, c. 188, § 1, 5 Stat. 517.

Codification. For changes effected by Acts May 28, 1896, and Mar. 2, 1901, see note under section 603 of this title.

Act Dec. 21, 1898, substituted the provisions of the second sentence for the words "and the suit shall be proceeded on in the court, and final judgment shall be given according to the usual course of admiralty courts in such cases"; sub-

stituted "may" for "shall" in the third sentence before the words "be joined as complainants"; made a slight change of phraseology concerning the burden of proof; and substituted the present provisions at the end of the section following the words "proceed to sea" for the words "before the end of ten days next after the delivery of her cargo or ballast."

Exception. Application of and exceptions to Act Dec. 21, 1898, see note under section 569 of this title.

Cross References

Coastwise trade vessels, application of section, see section 563 of this title.
Oyster vessels, application of section, see section 598 of this title.

Notes of Decisions

Generally 1
Admissibility of evidence 13
Allegations 6
Burden of proof 3
Consolidation 5
Costs 16
Evidence
 Admissibility 13
 Sufficiency 14
Exceptions 9
Intervention 7
Joinder and consolidation 5
Jurisdiction 2
Liens 10
Master 11
Process 4
Recovery 15
Shipping articles, production of 12
Time for suit 3

1. Generally

This section, read in connection with R.S. § 4536, repealed, which was similar to section 601 of this title, protects seamen's wages from seizure on execution or attachment. *Wilder v. Inter-Island Steam Nav. Co.*, Hawaii 1903, 29 S.Ct. 58, 211 U.S. 239, 53 L.Ed. 164, 15 Ann.Cas. 127.

In libel under this section for wages and for penalties for withholding wages, defense that because of incompetence, neglect of duty, and insubordination, libellant had been disrated from steward to work-a-way with authority and approval of United States Vice-Consul in London presented an issue of fact for the district court concerning justification for disrating and withholding wages. *The Dryden*, C.C.A.La.1942, 127 F.2d 879, certiorari denied 63 S.Ct. 67, 317 U.S. 636, 87 L.Ed. 512.

2. Jurisdiction

Under the provision of this section that nothing therein contained "shall prevent any seaman from maintaining an action at common law for the recovery of his wages," the state courts have jurisdiction of common-law actions to recover wages. *Calvin v. Huntley*, 1901, 59 N.E. 435, 178 Mass. 29.

3. Time for suit

Courts of admiralty generally follow analogy of state statute of limitations and hold that claim is barred unless libellant shows special circumstances excusing delay, and when delay is apparent on face of pleading, libellant must

plead and prove facts negating laches or tolling statute. *Gonzales v. The Archangelos*, D.C.Va.1955, 135 F.Supp. 663, affirmed 245 F.2d 412.

Where pleading shows delay beyond statute of limitation, and there is no proof to the contrary, detriment to adverse party may be presumed. *Id.*

Where seaman's suit for wages and waiting time was not instituted until seven and one-half years after his discharge, and no reason was asserted why suit was not previously instituted, suit was barred by laches, even in absence of showing of prejudice. *Id.*

Whether a libel by ferryboat employees for maritime lien upon ferryboat under agreement for dismissal benefits in contemplation of loss of employment because of opening of bridges was barred by laches could not be determined upon exceptions. *The New Orleans*, D.C.Cal. 1944, 54 F.Supp. 25.

Ferryboat employees seeking to establish maritime lien for dismissal benefits were not required to plead matters relating to time of service, since employer's records would provide the information. *Id.*

4. Process

A warrant of arrest on a libel filed for seamen's wages, issued by the clerk, without compliance with this section, is void. *The Berkeley*, D.C.S.C.1893, 58 F. 920.

Under this section the discretion of the commissioner is absolute, and he is not required to take and send up any depositions with the certificate, and he cannot charge fees for the same, to be taxed as costs. *Kelly v. The Topsy*, D. C.S.C.1891, 45 F. 486.

Under the treaty between the United States and the kingdom of Italy, stipulating that "consuls general, consuls, vice consuls, and consular agents shall have exclusive charge; * * * and shall alone take cognizance of questions, of whatever kind, that may arise, both at sea and in port, between the captain, officers, and seamen, without exception, and especially of those relating to wages, and the fulfillment of agreements reciprocally made,"—a justice of the peace has no power to compel a clerk of a United States district court upon a rule of court to issue admiralty process against a vessel for seamen's wages, although this and the following section empower justices to certify to such clerk whenever facts exist justifying the issue of such process, who thereupon is required to issue

such writ. *The Salomoni*, D.C.Ga.1886, 29 F. 534.

In seaman's suit for wages, admiralty court may exercise discretion for libellant's protection by correcting error in clerk's issuance of process in form usual to process in rem, instead of citation with clause of foreign attachment. *The Bennestvet*, D.C.N.Y.1940, 30 F.Supp. 794.

In admiralty suit for wages due seaman, libellant was entitled to issuance and service of citation with clause of foreign attachment, instead of form of process in proceeding in rem. *Id.*

In the absence of the judge, the clerk may issue process according to rules prescribed, or instructions given by the judge. *The William Jarvis*, D.C.Mass. 1859, Fed.Cas.No.17,697.

A certificate of a United States commissioner to the clerk as the foundation of process in behalf of seamen under this section and section 603 of this title, must show on its face that the commissioner had authority to act, and hence must show the absence of the district judge, or that he resided more than three miles distant from the place. *Kief v. The London*, D.C.Mich.1854, Fed.Cas.No.7,759. See, also, *Kief v. The Steamboat London*, 1852, Newb.Adm. 6.

It is questionable whether an appeal to the judge lies from an order of a commissioner or justice of the peace granting certificates of cause for admiralty process under this section but the judge or court may stay proceedings or act upon the petition *de novo*. *The Schooner Eagle*, D.C.N.Y.1846, Olc.Adm. 232, Fed. Cas.No.4,233.

5. Joinder and consolidation

In courts of admiralty seamen may sue jointly for wages, though they cannot in the common-law courts. *Oliver v. Alexander*, N.Y.1832, 31 U.S. 143, 6 Pet. 143, 8 L.Ed. 349.

Though seamen may join in a suit for wages, a decree against one does not affect the others. *Id.*

Where a number of libellants join in a suit in admiralty for wages, as permitted by this section, their claims are several, and not joint, and cannot be added together to give jurisdiction to an appellate court. *The Joseph B. Thomas*, Pa.1906, 148 F. 762, 78 C.C.A. 423.

Where in admiralty proceedings for seamen's wages there were four seamen whose cause of complaint was the same, they should be joined as complainants, under this section; and the commission-

Note 5

er is entitled to charge for issuing, filing, and returning but one summons on the master, and for but one certificate that admiralty process should issue, though in fact he issued four summonses and made four certificates. *Kelly v. The Topsy*, D.C.S.C.1891, 45 F. 488.

Several libels for wages and for allowance for reduction of provisions may be consolidated. *The Sarah E. Kennedy*, D.C.N.J.1885, 25 F. 672.

This section relating to suits by seamen to recover wages merely permits joinder by seamen with like causes of action and does not permit one seaman to bring suit for another with or without permission. *Totolos v. Compania De Navegacion Cristobal, S.A.*, D.C.N.Y.1950, 94 F.Supp. 699.

Fellow members of crew may join in a suit for wages brought by a shipmate but suit may not be brought in their behalf unless authorized by them. *Id.*

Two members of a crew could not maintain action in admiralty on behalf of other crew members similarly situated to recover wages allegedly due them in absence of allegation of authority to represent the other claimants. *Wahlborg v. American S. S. Co.*, D.C.N.Y.1938, 94 F.Supp. 698.

Ferryboat employees properly joined their claims for maritime lien upon ferryboat under agreement for dismissal benefits in contemplation of loss of employment because of opening of bridges for trans-bay traffic. *Gayner v. The New Orleans*, D.C.Cal.1944, 54 F.Supp. 25.

Where the vessel is liable to two libelants for wages, for which, under the practice of the court in respect to the consolidation of suits, they may be compelled to sue in common, they may join in one action in rem, not only in suing for the common demands, but also in respect to other claims which are peculiar to each. *The Sloop Merchant*, D.C.N.Y. 1847, *Abb. Adm. 1*, Fed.Cas.No.9,434.

All the seamen suing in personam for wages earned on the same voyage need not unite in one action. *Nelson v. The Hercules*, D.C.Mass.1841, Fed.Cas.No.10,108. See, also, *Collins v. Hathaway*, D.C.N.Y.1845, Fed.Cas.No.3,014.

The practice of the court, in conformity with the spirit of this section, is to allow any of the members of a crew to come in on summary petition and enjoy the advantages of a prosecution instituted by a shipmate to recover the wages of a common voyage and if the section is not to be construed as imperative, and

as compelling the union of all the mariners in one suit, to recover the wages of the same voyage, it, at all events, removes every occasion for different actions and takes away all equity as to costs when different actions are instituted. *Reed v. Hussey*, D.C.N.Y.1836, 1 *Blatchf. & H. Adm.* 525, Fed.Cas.No.11,646.

6. Allegations

Libel by seamen for agreed percentage of net profits due from fishing operations stated cause of action, though amount due each had not been reduced to a certainty. *Sagliuzzo v. Frymier*, C.C.A.Cal.1926, 15 F.2d 749.

In summary actions for seamen's wages, the authority of a statute is sufficiently pleaded by a general reference to the law of Great Britain. *The Alps*, D.C.N.Y.1883, 19 F. 139.

In action on behalf of seamen and officers to recover vacation pay under Labor Code of Panama and penalties for unlawful withholding of wages, where it was alleged that at least some of libelants had been discharged and had not received vacation pay, libel sufficiently stated claim for vacation pay owing, notwithstanding failure to allege that libelants took vacations, since it is not necessary under Panamanian Law that vacations be actually taken to entitle workers to vacation pay. *Sotirios Ampatis v. Compania Maritima Samsoc Ltda., S. A.*, D.C.N.Y.1950, 92 F.Supp. 171, modified in part on other grounds 103 F.Supp. 733.

The decision whether a libel by ferryboat employees to establish maritime lien upon ferryboat for services rendered upon other ferryboats stated cause of action would not be made upon exceptions, in view of liberal construction of pleadings in admiralty. *The New Orleans*, D.C.Cal.1944, 54 F.Supp. 25.

A discharged seaman suing for wages could not make a claim at the trial for maintenance where there were no allegations of any such claim in the libel. *The Vema*, D.C.N.Y.1939, 27 F.Supp. 681.

Where a libel for seaman's wages under this section alleged that the vessel was about to proceed to sea before the end of the 10 days, respondent cannot be permitted to deny the truth of the allegation, the objection not having been taken by a dilatory plea, nor the allegation denied in the answer. *The William Harris*, D.C.Me.1837, Fed.Cas.No.17,695.

It is not necessary to annex to a libel for wages an account stating the rate of wages and the precise balance due, it

is sufficient if the contract is stated and the service alleged in proper form, if the libellant sets forth a particular balance as due, and it appears by the proofs that a larger sum is due, the court is not limited to the precise amount claimed in the libel. *Pratt v. Thomas*, D.C.Me. 1837, 1 Ware 427, Fed.Cas.No.11,377.

7. Intervention

Though a warrant be issued under a certificate of sufficient cause of complaint for admiralty process, conformably to this section, the owner may intervene by answer, and bar the action by proving that libellant had no right to sue. *The Warrington*, D.C.N.Y.1832, Fed. Cas.No.17,208.

8. Burden of proof

Seaman seeking recovery of wages against ship has burden of proof. *Folkes v. Proceeds, Remnants and Surplus of the General Geo. W. Goethals*, D.C.N.Y. 1923, 27 F.2d 183.

Libellant who sought wages due from Honduran vessel and whose libel disclosed delay beyond limitation period had burden, if relying on any exception in Honduran law, to prove the same for purpose of hearing on question of laches. *Gonzales v. The Archangelos*, D.C.Va. 1955, 135 F.Supp. 663, affirmed 245 F.2d 412.

When employee works in both intrastate and interstate commerce, he has burden, in action to recover overtime compensation, to point out what part of work was in intrastate and what part in interstate commerce, and extent of interstate work and when performed. *Schwarz, for Use and Benefit of Kotek, v. Witwer Grocery Co.*, D.C.Iowa 1943, 49 F.Supp. 1003, affirmed 141 F.2d 341, certiorari denied 64 S.Ct. 1265, 322 U.S. 753, 88 L.Ed. 1533.

9. Exceptions

Exception to seaman's libel for wages, based on shipping articles not made a part thereof, was not sustainable. *Christie v. Carlisle*, D.C.La.1926, 11 F.2d 659.

Exception to seaman's libel for wages, based on pleaded foreign law, was not sustainable. *Id.*

10. Liens

Evidence supported finding that one of intervening libellants did not sign share agreement with boat owner but was a salaried employee, so as to render his claim for unpaid wages superior to recorded preferred ship mortgage on the

boat. *Putnam v. Lower*, C.A.Wash.1936, 236 F.2d 561.

Maritime lien cannot be allowed to seamen for wages occurring subsequent to time ship is taken into custodia legis, particularly where libel is filed by the crew of the vessel. *Id.*

Priority of a seamen's lien for wages is established by admiralty law. *U. S. v. The Pomare*, D.C.Hawaii 1950, 92 F. Supp. 185.

In absence of specific statutory provision to contrary, seamen's liens against ship for wages primed both Government's lien for taxes and Government's marine mortgage lien. *Id.*

Where general manager of company owning vessel paid wages of certain crew members out of his own funds relying upon his ability to pay himself out of company's funds instead of looking to ship for security, general manager was not entitled to a preferred maritime lien against ship for amount so paid by him. *Id.*

Generally, maritime liens end with libeling and taking over by court of vessel and after the legal seizure of vessel the seamen ordinarily no longer have a maritime lien for their wages. *The Herbert L. Rawding*, D.C.S.C.1944, 55 F.Supp. 156.

The lien of crew for wages continued between time when vessel was libeled by parties other than crew until crew filed their libel, but when crew filed their libel their maritime lien ended. *Id.*

11. Master

Master was not entitled to a seaman's lien for wages on theory that he was required to perform duties of a seaman "in conformity with maritime regulation and to preserve the security and safety" of the vessel because of insufficient personnel. *U. S. v. The Pomare*, D.C.Hawaii 1950, 92 F.Supp. 185.

The master of a vessel is not a member of the "crew" and has no maritime lien for wages. *The Herbert L. Rawding*, D.C.S.C.1944, 55 F.Supp. 156.

Master could not be granted maritime lien for wages for period he remained aboard vessel while she lay in dock on theory that he was a caretaker rather than master and was entitled to compensation on basis of quantum meruit. *Id.*

12. Shipping articles, production of

Where shipping articles are not produced on due notice, libellant's statement

Note 12

of their contents is *prima facie* evidence thereof. *The Osceola*, D.C.N.Y.1846, Fed. Cas.No.10,602.

The claimants on proving a reasonable excuse for not producing the shipping articles on trial, may contradict by parol evidence the statement of their contents by the mariner. *Id.*

The right of a seaman to his wages depends on the service and not on the shipping articles, and he is not obliged to call for them in order to establish his claim to wages, though he may do so. *The Trial*, D.C.N.Y.1830, 1 Blatchf. & H. Adm. 94, Fed.Cas.No.14,170.

13. Evidence—Admissibility

In libel for seamen's wages, declarations of witness that he owned tug were properly admitted as *res gestæ* concerning respondent's liability as owner. *The John E. Berwind*, C.C.A.N.Y.1932, 56 F. 2d 13.

The statement of the seaman is incompetent evidence to prove services rendered by him on board the vessel under the shipping articles. *The Brig Osceola*, D.C.N.Y.1846, *Olc.Adm.* 450, Fed.Cas.No. 10,602.

14. — Sufficiency

Evidence supported finding that libellant seeking to recover wages was master of vessel and, as such, entitled to no lien for his wages, and that he performed no services on vessel which would entitle him to a maritime lien. *Walker v. Woolsey*, C.A.La.1951, 186 F.2d 920.

In libel for seamen's wages, evidence required finding that one who bought in tug operated by another had only security title and was not personally liable. *The John E. Berwind*, C.C.A.N.Y.1932, 56 F.2d 13.

Evidence showed that injured boatswain, suing for wages, was not guilty of fraud, imposition, or deception as to physical condition. *Peterson v. U. S.*, D. C.Wash.1923, 27 F.2d 132.

Evidence showed that boatswain, suing for wages, was prevented from continuing voyage by new injury to jaw, broken before entering employment. *Id.*

Evidence authorized finding that an oral agreement was entered into providing that libellant who was husband of one of co-owners of motor vessel was to receive wages at union scale for his services as launchman while ship was chartered to a third party. *The James H.*, D.C.N.Y.1943, 49 F.Supp. 1001.

In engineer's libel to recover wages, evidence established that compensation

agreed on was \$250 per month, of which \$100 was to be paid monthly and balance upon refinancing, placing in operation, selling, or other disposition of two vessels or either of them. *De Groat v. Trailerships, Inc.*, D.C.Pa.1943, 48 F.Supp. 857.

Where a seaman shipped under articles at Boston in December, 1842, and at New Orleans in March, 1843, and left the ship at Bordeaux in June, 1843, and in his libel filed against the vessel in court for wages on those voyages he prayed that the shipping articles might be produced by the master or owner, this was not such notice or requirement as would render his statement proof of their contents. *The Osceola*, D.C.N.Y.1846, Fed. Cas.No.10,602.

15. Recovery

Where members of crew stayed on ship after they had filed libel for wages, rendered maritime service tending and caring for vessel and had not been discharged, the members of the crew were entitled to be paid on quantum meruit basis for services rendered after they had filed their libel, and the wages they had theretofore been earning were not an unreasonable basis for determining the quantum meruit value of their services. *The Herbert L. Rawding*, D.C.S.C. 1944, 55 F.Supp. 156.

Seaman who was not entitled to recover from vessel owner for maintenance and cure of injuries sustained while on shore leave in foreign port was not entitled to recover wages to end of voyage after his later return to home port. *Smith v. American South African Line*, D.C.N.Y.1941, 37 F.Supp. 262.

16. Costs

Where, in an admiralty proceeding for seamen's wages against a foreign vessel, a commissioner, in the absence of the judge from the district, heard the testimony, and issued process under this section and section 603 of this title, and the libellant's proctor, beginning to fear that this section was not applicable, sent telegrams to the judge, asking him to issue or authorize his warrant of arrest, which he declined to do, such telegrams were for the convenience of the counsel, to save travelling expenses, and the money paid therefor cannot be taxed as costs, as money properly and necessarily expended. *Kelly v. The Topsy*, D.C.S.C. 1891, 45 F. 436.

The discretion of the commissioner as to sending up the certificate for process is absolute, and he is not required to take and send up any depositions with

the certificate, and he cannot charge fees for the same, to be taxed as costs. *Id.*

Security for costs is not required. *The Shelbourne*, D.C.Ala.1887, 30 F. 510.

Where libel and intervening libel by seamen against owners of barges to recover extra wages claimed to be owed seamen were filed without prepayment of

costs, decree dismissing libels would not carry costs. *Buttlimer v. Detroit Sulphite Transp. Co.*, D.C.Mich.1941, 39 F. Supp. 222.

When two libels are filed where one only is required, costs only in one are allowed. *The R. P. Chase*, D.C.Me.1861, 3 Ware 294, Fed.Cas.No.12,099.

§ 605. Wages payable in gold

Moneys paid under the laws of the United States, by direction of consular officers or agents, at any foreign port or place, as wages, extra or otherwise, due American seamen, shall be paid in gold or its equivalent, without any deduction whatever, any contract to the contrary notwithstanding. R.S. § 4548.

Historical Note

Derivation. Act Mar. 3, 1873, c. 265, 17 Stat. 602.

Cross References

Gold coinage discontinued in United States, see section 315b of Title 31, Money and Finance.

Obligations discharged by legal tender for public and private debts, see section 463 of Title 31, Money and Finance.

Notes of Decisions

Foreign

Port, payment at 1

Seaman 2

Share of voyage proceeds

1. Foreign port, payment at

Foreign coin paid seamen on their discharge abroad is to be valued at its rate in the home port, under the laws of the United States; otherwise where payment is a voluntary advance. *The Cabot*, D.C. N.Y.1848, Fed.Cas.No.2,277.

Where the crew of an American ship had been shipped by the master in the United States, and the shipping articles contained a clause that "all moneys were to be paid in United States currency or its equivalent in gold at the current rate of exchange," in settling some accounts with the master, at Singapore, India, for the wages of his crew, the United States consul there should have allowed a deduction from the pay of the seamen of the difference between "greenbacks" and gold or silver, the currency of Singapore, and the cost of exchange thereon between India and America. 1872, 13 Op.Atty.Gen. 557.

2. Foreign seaman

The amount decreed to seamen shipped at Hamburg for a return voyage, which was broken up at New York, is the amount of their wages in Hamburg money reduced to United States coined dollars, without adding anything for the premium on gold. *The Blohm*, D.C. N.Y.1867, Fed.Cas.No.1,556.

The wages of seamen shipped at Valparaiso, on board a Chilean vessel, for a voyage to Boston and return, should be reckoned in money of the United States, where the contract was for so many dollars, payable here. *The Quintero*, D.C.Mass.1866, Fed.Cas.No.11,517.

Foreign seamen, who abandon their vessel in a United States port upon a strict construction of their contract, can recover only the value of their demands in the currency of the United States, without regard to its depreciation. *Reynolds v. The Simoon*, D.C.N.Y.1863, Fed.Cas.No.11,733.

3. Share of voyage proceeds

Where libellant was to receive $\frac{1}{2}$ part of the proceeds of the voyage, he receives his full share if he receives pay in whatever currency makes up the proceeds. *Carter v. Swift*, D.C.Mass.1869, Fed.Cas.No.2,479.

WAGES ON CANAL BOATS

§ 611. Libel of canal boats for wages

No canal boat, without masts or steam power, which is required to be registered, licensed, or enrolled and licensed, shall be subject to be libeled in any of the United States courts for the wages of any person who may be employed on board thereof, or in navigating the same. R.S. § 4251.

Historical Note

Derivation. Act July 20, 1846, c. 60, § 1, 9 Stat. 38.

Cross References

Enrollment, license, and custom fees, exemption of canal boats, see section 336 of this title.

Notes of Decisions

Generally 1
 "Canal boats" 2
 Jurisdiction of courts 3

1. Generally

This section was not abrogated by section 336 of this title. *The J. S. Woodward*, D.C.N.Y.1881, 6 F. 636.

2. "Canal boats"

This section is not rendered inapplicable by the fact that the boat is, upon the trip in question, towed through the canal by a steam yacht. *The George Urban, Jr.*, D.C.N.Y.1895, 70 F. 791.

A vessel engaged in navigating canals is a canal boat, within the meaning of this section, without reference to its form, and a boat not engaged in navigating canals is not a canal boat, within the meaning of the section, whatever may be its form. *Smith v. The William L. Norman*, D.C.N.Y.1891, 49 F. 285. See, also, *The A. H. Chamberlain*, D.C.N.Y. 1913, 206 F. 996.

3. Jurisdiction of courts

This section does not affect the jurisdiction of a United States district court over a libel filed against a canal boat to enforce a claim for towing it up the Hudson river. *Ryan v. Hook*, N.Y.1884, 34 Hun 185.

EFFECTS OF DECEASED SEAMEN

§ 621. Duty of master where seaman dies during voyage

Whenever any seaman or apprentice belonging to or sent home on any merchant vessel, whether a foreign-going or domestic vessel, employed on a voyage which is to terminate in the United States, dies during such voyage, the master shall take charge of all moneys, clothes, and effects which he leaves on board, and shall, if he thinks fit, cause all or any of such clothes and effects to be sold by auction at the mast or other public auction, and shall thereupon sign an entry in the official log book, and cause it to be attested by the mate and one of the crew, containing the following particulars:

First. A statement of the amount of money so left by the deceased.

Second. In case of a sale, a description of each article sold, and the sum received for each.

Third. A statement of the sum due to deceased as wages, and the total amount of deductions, if any, to be made therefrom. R.S. § 4538.

Historical Note

Derivation. Act June 7, 1872, c. 322, § 43, 17 Stat. 271.

Cross References

Application of section to sail or steam vessels engaged in coastwise trade, see section 544 of this title.

Provision for payment of obligations in gold prohibited, see section 463 of Title 31, Money and Finance.

Notes of Decisions

Wages due 1, 2

Deductions 2

1. Wages due

A seaman who ships for a voyage, concealing from the master a longstanding disease, which incapacitates him for labor, is not entitled to wages. *Mowatt v. Brown*, D.C.N.Y.1848, Fed.Cas.No.9,889a.

Where a seaman suffering from a disease when he ships dies during the voyage, his administrator cannot recover wages. *Writer v. The Richmond*, D.C. Pa.1807, Fed.Cas.No.18,104.

The representatives of a seaman dying on a voyage in the service of the ship are entitled to his wages for the whole voyage where the engagement was by the month. *Sims v. Jackson*, C.C.Pa.1806, Fed.Cas.No.12,890. See, also, *Walton v. The Neptune*, D.C.Pa.1800, Fed.Cas.No.17,135; *Natterstrom v. The Hazard*, D.C. Mass.1809, Fed.Cas.No.10,055; *Johnson v. The Coriolanus*, D.C.Pa.1839, Fed.Cas.No.7,380.

Where a seaman dies before the voyage is completed his representatives are

entitled to his wages up to the time of his death. *Scott v. The Greenwich*, D.C. Pa.1802, Fed.Cas.No.12,531. See, also, *Carey v. The Kitty*, D.C.S.C.1808, Fed.Cas.No.2,402.

No wages will be allowed during a sickness which arose from the fault or vice of the seaman. *Walton v. The Neptune*, D.C.Pa.1800, Fed.Cas.No.17,135.

2. — Deductions

A shipping commissioner has no authority to allow deductions from the wages of a seaman who died during the voyage, unless they are shown by an entry in the official log, verified as therein required. *U. S. v. McDonald*, D.C.Cal. 1914, 217 F. 636.

Where the master of a vessel sells at the mast the effects of a deceased seaman, and accounts to a shipping commissioner for the proceeds, in accordance with this section, he cannot deduct from such proceeds the amount due the ship by the sailor for wages advanced but not earned. *U. S. v. Tobey*, D.C.Pa. 1882, 12 F. 347.

§ 622. Proceedings in regard to effects

In cases embraced by section 621 of this title, the following rules shall be observed:

First. If the vessel proceeds at once to any port in the United States, the master shall, within forty-eight hours after his arrival, deliver any such effects remaining unsold, and pay any money which he has taken charge of or received from such sale, and the balance of wages due to the deceased, to the Coast Guard official to whom the

duties of shipping commissioner have been delegated at the port of destination in the United States.

Second. If the vessel touches and remains at some foreign port before coming to any port in the United States, the master shall report the case to the United States consular officer there, and shall give to such officer any information he requires as to the destination of the vessel and probable length of the voyage; and such officer may, if he considers it expedient so to do, require the effects, money, and wages to be delivered and paid to him, and shall, upon such delivery and payment, give to the master a receipt; and the master shall within forty-eight hours after his arrival at his port of destination in the United States produce the same to the Coast Guard official to whom the duties of shipping commissioner have been delegated there. Such consular officer shall, in any such case, indorse and certify upon the agreement with the crew the particulars with respect to such delivery and payment.

Third. If the consular officer does not require such payment and delivery to be made to him, the master shall take charge of the effects, money, and wages, and shall, within forty-eight hours after his arrival at his port of destination in the United States, deliver and pay the same to the Coast Guard official to whom the duties of shipping commissioner have been delegated there.

Fourth. The master shall, in all cases in which any seaman or apprentice dies during the voyage or engagement, give to such officer or Coast Guard official an account, in such form as they may respectively require, of the effects, money, and wages so to be delivered and paid; and no deductions claimed in such account shall be allowed unless verified by an entry in the official log book, if there be any; and by such other vouchers, if any, as may be reasonably required by the officer or Coast Guard official to whom the account is rendered.

Fifth. Upon due compliance with such of the provisions of this section as relate to acts to be done at the port of destination in the United States, the Coast Guard official to whom the duties of shipping commissioner have been delegated shall grant to the master a certificate to that effect. No officer of customs shall clear any foreign-going vessel without the production of such certificate. R.S. § 4539; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Derivation. Act June 7, 1872, c. 322, § 44, 17 Stat. 271.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with

power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1230, set out in note under section 241 of Title 5, Executive Departments and Government Officers and

Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

References to "shipping commissioner" were changed to "Coast Guard official" in

par. Fourth and to "Coast Guard official to whom the duties of shipping commissioner have been delegated" in the remainder of this section by 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Cross References

Application of section to sail or steam vessels engaged in coastwise trade, see section 544 of this title.

Notes of Decisions

Consular officers 1

Shipping commissioner 2

1. Consular officers

It is only in case of the death of a seaman, and under the circumstances indicated in the second division of this section, that any consular officer is authorized to require the money, wages, etc., of a seaman to be delivered to him. 1875, 14 Op.Atty.Gen. 520.

2. Shipping commissioner

"Verified by an entry in the official log book" as used in this section means verified as required by section 621 of this title, that is, signed by the master, and attested by the mate and one of the crew, and unless the entry is so verified the shipping commissioner could not allow deductions therefor. U. S. v. McDonald, D.C.Cal.1914, 217 F. 686.

Where messman after destruction of vessel by enemy action was declared pre-

sumptively dead pursuant to option properly exercised by shipowner in accordance with decision of the Maritime War Emergency Board incorporated in the shipping articles, shipowner was authorized to pay wages and benefits of the messman to the shipping commissioner in accordance with the board's ruling although the rule was promulgated subsequent to the signing of the articles by the messman. *Montoya v. Tide Water Associated Oil Co.*, D.C.N.Y.1943, 79 F. Supp. 677, affirmed 174 F.2d 607, certiorari denied 70 S.Ct. 89, 338 U.S. 847, 94 L.Ed. 518.

United States shipping commissioner, under former section 541 et seq. of this title creating his office, could take possession of the property of a sailor, dying on a voyage to port, which such sailor left on the vessel but such sections did not authorize the commissioner to take charge of the sailor's property on shore. In re *Bedford's Estate*, Cal.1874, Myr. Prob. 60.

§ 623. Penalty for neglect of master

Whenever any master fails to take such charge of the money or other effects of a seaman or apprentice during a voyage, or to make such entries in respect thereof, or to procure such attestation to such entries, or to make such payment or delivery of any money, wages, or effects of any seaman or apprentice dying during a voyage, or to give such account in respect thereof as is above directed, he shall be accountable for the money, wages, and effects of the seaman or apprentice to the district court in whose jurisdiction such port of destination is situate, and shall pay and deliver the same accordingly; and he shall, in addition, for every such offense, be liable to a penalty of not more than treble the value of the money or effects, or, if such value is not ascertained, not more than \$200; and if any such money,

wages, or effects are not duly paid, delivered, and accounted for by the master, the owner of the vessel shall pay, deliver, and account for the same, and such money and wages and the value of such effects shall be recoverable from him accordingly; and if he fails to account for and pay the same, he shall, in addition to his liability for the money and value be liable to the same penalty which is incurred by the master for a like offense; and all money, wages, and effects of any seaman or apprentice dying during a voyage shall be recoverable in the courts and by the modes of proceeding by which seamen are enabled to recover wages due to them. R.S. § 4540; Mar. 3, 1911, c. 231, 36 Stat. 1167.

Historical Note

Derivation. Act June 7, 1872, c. 322, § 45, 17 Stat. 271.

Codification. The word "district" was substituted for "circuit" before "court"

to conform to Act Mar. 3, 1911, sections 289 to 291 of which abolished the circuit courts, and transferred their powers and duties to the district courts.

Cross References

Application of section to sail or steam vessels engaged in coastwise trade, see section 544 of this title.

§ 624. Duties of consular officers

Whenever any such seaman or apprentice dies at any place out of the United States, leaving any money or effects not on board of his vessel, the consular officer of the United States at or nearest the place shall claim and take charge of such money and effects, and shall, if he thinks fit, sell all or any of such effects, or any effects of any deceased seaman or apprentice delivered to him under the provisions of section 622 of this title, and shall quarterly remit to the district court of the district embracing the port from which such vessel sailed, or the port where the voyage terminates, all moneys belonging to or arising from the sale of the effects or paid as the wages of any deceased seamen or apprentices which have come to his hands; and shall render such accounts thereof as the district court requires. R.S. § 4541; Mar. 3, 1897, c. 389, § 4, 29 Stat. 689; Mar. 3, 1911, c. 231, 36 Stat. 1167.

Historical Note

Derivation. Act June 7, 1872, c. 322, § 46, 17 Stat. 272.

Codification. Act Mar. 3, 1911, abolished circuit courts. See note under section 623 of this title.

Act Mar. 3, 1897, substituted references to the Circuit Court for references to the district judge.

Cross References

Application of section to sail or steam vessels engaged in coastwise trade, see section 544 of this title.

§ 625. Effects of seaman dying within the United States

Whenever any seaman or apprentice dies in the United States, and is, at the time of his death, entitled to claim from the master or owner of any vessel in which he has served, any unpaid wages or effects, such master or owner shall pay and deliver, or account for the same, to the Coast Guard official to whom the duties of shipping commissioner have been delegated at the port where the seaman or apprentice was discharged, or was to have been discharged or where he died. R.S. § 4542; Mar. 3, 1897, c. 389, § 6, 29 Stat. 689; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Derivation. Act June 7, 1872, c. 322, § 47, 17 Stat. 272.

Codification. Act Mar. 3, 1897, added the words "or where he died" at end of R.S. § 4542.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred

to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

Reference to shipping commissioner was changed to Coast Guard official to whom the duties of shipping commissioner have been delegated on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Cross References

Application of section to sail or steam vessels engaged in coastwise trade, see section 544 of this title.

Seamen on vessel in coastwise trade, etc., to receive wages as provided in this and enumerated sections, see section 563 of this title.

§ 626. Payment to district court

Every Coast Guard official to whom the duties of shipping commissioner have been delegated in the United States shall, within one week from the date of receiving any such money, wages, or effects of any deceased seaman or apprentice, pay, remit, or deliver to the district court of the district in which he resides, the money, wages, or effects, subject to such deductions as may be allowed by the district court for expenses incurred in respect to such money and effects; and should any Coast Guard official fail to pay, remit, and deliver the same to the district court, within the time hereinbefore mentioned, he shall incur a penalty of not more than treble the value of such money and effects. R.S. § 4543; Mar. 3, 1911, c. 231, 36 Stat. 1167;

1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Derivation. Act June 7, 1872, c. 322, § 48, 17 Stat. 272.

Codification. By Act Mar. 3, 1911, references to the district court were substituted for references to the Circuit Court. See note under section 623 of this title.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and

Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

References to shipping commissioner were changed to Coast Guard official to whom the duties of shipping commissioner have been delegated and to such Coast Guard official on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Cross References

Application of section to sail or steam vessels engaged in coastwise trade, see section 544 of this title.

Seamen on vessel in coastwise trade, etc., to receive wages as provided in this and enumerated sections, see section 563 of this title.

Notes of Decisions

Expense allowances Fees 2

1. Expense allowances

The District Court may allow a shipping commissioner expenses for turning over money, wages, and effects of deceased seamen, notwithstanding section 628 of this title. *U. S. v. Grant*, D.C. Mass. 1914, 224 F. 644.

Steamship company which paid into court deserting seaman's unpaid wages,

part of which court ordered forfeited, was not entitled to be compensated out of forfeited wages for maintenance advanced to seaman after his desertion. *In re Mitchell*, D.C. Or. 1943, 84 F. Supp. 871.

2. Fees

A shipping commissioner is not entitled to receive a fee from the estate of a deceased seaman. *In re MacDonald*, D. C. N. Y. 1917, 248 F. 983.

§ 627. Distribution by district court

If the money and effects of any seaman or apprentice paid, remitted, or delivered to the district court, including the moneys received for any part of his effects which have been sold, either before delivery to the district court, or by its directions, do not exceed in value the sum of \$300, then, subject to the provisions hereinafter contained, and to all such deductions for expenses incurred in respect to the seaman or apprentice, or of his money and effects, as the said court

thinks fit to allow, the court may pay and deliver the said money and effects to any claimants who can prove themselves either to be his widow or children, or to be entitled to the effects of the deceased under his will, or under any statute, or at common law, or to be entitled to procure probate, or take out letters of administration or confirmation, although no probate or letters of administration or confirmation have been taken out, and shall be thereby discharged from all further liability in respect of the money and effects so paid and delivered; or may, if it thinks fit so to do, require probate, or letters of administration or confirmation, to be taken out, and thereupon pay and deliver the said money and effects to the legal personal representatives of the deceased; and if such money and effects exceed in value the sum of \$300, then, subject to deduction for expenses, the court shall pay and deliver the same to the legal personal representatives of the deceased. R.S. § 4544; Mar. 3, 1911, c. 231, 36 Stat. 1167.

Historical Note

Derivation. Act June 7, 1872, c. 322, § 49, 17 Stat. 272.

Codification. By Act Mar. 3, 1911, references to the district court were sub-

stituted for references to the circuit court. See note under section 623 of this title.

Cross References

Application of section to sail or steam vessels engaged in coastwise trade, see section 544 of this title.

Seamen on vessel in coastwise trade, etc., to receive wages as provided in this and enumerated sections, see section 563 of this title.

Notes of Decisions

Administration 5
Constitutionality 1
Death 4
Deserters 9
Insurance 8
"Legal personal representatives" 3
Minor children 6
Purpose 2
Wife, rights of 7

to, with the greatest expedition and the least expense, without the necessity of formal administration. In re Holmberg, D.C.Cal.1912, 193 F. 260.

3. "Legal personal representatives"

Public administrator was "legal personal representative of deceased" within this section relating to disposition of wages of deceased seamen, wages of deceased seaman, less than \$300, in court's registry, should not however be paid to public administrator, where estate appears likely to remain unclaimed or person entitled thereto is known. In re Buckley, D.C.Mass.1929, 33 F.2d 615.

The meaning of "legal personal representative" as used in this section should be determined in the light of general admiralty law, which often disregards technical common-law principles in order to attain an equitable result. In re Wiffler, D.C.Mass.1942, 45 F.Supp. 171.

Deposits in court of wages and personal effects of deceased seamen, exceed-

1. Constitutionality

Congress has power to provide for the disposition of the wages and effects of seamen who die in service. In re Buckley, D.C.Mass.1929, 33 F.2d 615.

2. Purpose

The obvious purpose of this section is to provide a brief, informal, and summary method of disposing of the money and effects of the class to which it relates, where they do not exceed in value the amounts specified, in such manner as to reach those eventually entitled there-

ing in value the sum of \$300, were required by this section to be paid to the legal personal representative of each decedent. *Id.*

A fund deposited on behalf of a deceased seaman in the registry of United States District Court for the District of Massachusetts is an "asset" with a "situs" in Massachusetts subject to administration by a public administrator appointed by court of that state, and in the absence of other claimants, such public administrator would be the "legal personal representative" within this section. *Id.*

4. Death

Where messman had agreed that in certain events, which occurred, he might be declared presumptively dead, he was bound by disposition of wages in accordance with section 626 of this title and this section, and fact that what was done also complied with decision by which he was not bound was immaterial. *Montoya v. Tide Water Associated Oil Co.*, C.A.N.Y.1949, 174 F.2d 607, certiorari denied 70 S.Ct. 89, 338 U.S. 847, 94 L.Ed. 518.

5. Administration

Wages of deceased seamen in registry of federal court were "funds within commonwealth," conferring jurisdiction on state probate court to appoint administrator. *In re Buckley*, D.C.Mass.1929, 33 F.2d 615.

It is not necessary, to meet the requirements of this section, that the applicant shall appear to have the exclusive right to administer, but only that he shall be eligible to "take out letters." *In re Holmberg's Estate*, D.C.Cal.1912, 193 F. 260.

Under Treaty with Sweden, Treaty Series No. 557, art. 14, Code Civ.Proc.Cal. § 1305, and this section, where a seaman, subject of the King of Sweden, died in the United States, and his effects were paid into the registry of the former Circuit Court, the Swedish consul was the proper person to receive and transmit them to Sweden for distribution. *Id.*

6. Minor children

Money paid to the guardian of the minor children of a deceased seaman, pur-

suant to rules adopted by the Treasury Department of the United States, belongs to such minors, and does not go to the administrator. *Low v. Hanson*, 1881, 72 Me. 104.

7. Wife, rights of

Unpaid wages due deceased seaman were payable to his surviving wife. *Guss v. Lastrap*, C.C.A.Tex.1944, 142 F.2d 872, certiorari denied 65 S.Ct. 117, 323 U.S. 764, 89 L.Ed. 611.

8. Insurance

Where corporate employer operating ocean-going tankers failed to procure insurance on life of seaman after it had agreed to abide by decision of Maritime War Emergency Board respecting war risk insurance for seamen and Board had ordered procuring of such insurance, card signed by seaman when he was employed which named his beneficiary in event of death, without mentioning insurance, did not constitute legal disposition by seaman of moneys paid into registry of court after seaman's death by employer in interpleader action wherein it admitted that it owed such money as insurance. *Guss v. Lastrap*, C.C.A.Tex.1944, 142 F.2d 872, certiorari denied 65 S.Ct. 117, 323 U.S. 764, 89 L. Ed. 611.

Where corporate employer operating ocean-going tankers, which had agreed to abide decision of Maritime War Emergency Board respecting war risk insurance for seamen, neglected to obey order of the Board by failing to insure deceased seaman, money paid into registry of court by employer in its interpleader action wherein it admitted that it owed \$5,150 by way of insurance was not "insurance funds", community estate of deceased and his wife, or damages, but was payable to deceased seaman's heirs at law. *Id.*

9. Deserters

Provision of this section that wages of deceased seamen are used first for satisfaction of claims which court thinks fit to allow, and then for seaman's widow or children or those entitled under his will or by statutes governing distribution of intestate estates, is not applicable to wages of deserting seamen. *In re Zanicki*, D.C.Mass.1946, 65 F.Supp. 447.

§ 628. Unclaimed wages and effects

A district court, in its discretion, may at any time direct the sale of the whole or any part of the effects of a deceased seaman or apprentice, which it has received, and shall hold the proceeds of such

sale as the wages of deceased seamen are held. When no claim to the wages or effects or proceeds of the sale of the effects of a deceased seaman or apprentice, received by a district court, is substantiated within six years after the receipt thereof by the court, it shall be in the absolute discretion of the court, if any subsequent claim is made, either to allow or refuse the same. Such courts shall, from time to time, pay any moneys arising from the unclaimed wages and effects of deceased seamen, which in their opinion it is not necessary to retain for the purpose of satisfying claims, into the Treasury of the United States, and such moneys shall form a fund for, and be appropriated to, the relief of sick and disabled and destitute seamen belonging to the United States merchant marine service. R.S. § 4545; Mar. 3, 1897, c. 389, § 7, 29 Stat. 689; Mar. 3, 1911, c. 231, 36 Stat. 1167.

Historical Note

Derivation. Act June 7, 1872, c. 322, § 50, 17 Stat. 273.

Codification. By Act Mar. 3, 1911, references to the District Court were substituted for references to the Circuit Court. See note under section 623 of this title.

Act Mar. 3, 1897, inserted the first sentence of the section as set forth above, and the words "or proceeds of the sale of the effects," in the second sentence.

Cross References

Application of section to vessels in coastwise trade, etc., see section 563 of this title.

Notes of Decisions

Generally 1
Escheat 2
Interest 3

1. Generally

Section 626 of this title gave the District Court power to allow a shipping commissioner expenses for turning over money, wages, and effects of deceased seamen, notwithstanding this section. *U. S. v. Grant*, D.C.Mass.1914, 224 F. 644.

A seaman who desires to assert claim to money his employer has turned over to registry of court on ground that seaman deserted, should file with clerk a verified petition setting forth grounds of claim, facts surrounding cessation of employment, and a prayer that court issue order directed to master of ship and to attorney general as representative of destitute seamen's fund, asking them to show cause why balance should not be paid over to seaman. In *re Zanicki*, D.C.Mass.1946, 65 F.Supp. 447.

2. Escheat

That deceased seamen's wages are paid to public administrator does not cause them to escheat, if not claimed, but they become payable into fund for ill and

disabled seamen. In *re Buckley*, D.C.Mass.1929, 33 F.2d 615.

Commonwealth had no power to determine escheat of moneys arising from unclaimed wages and effects of deceased seamen paid to federal court and subsequently deposited in Treasury of the United States under this section directing that such moneys should form a fund for and be appropriated to relief of sick and disabled and destitute seamen of the United States Merchant Marine service, and Pennsylvania escheat statute, 27 P.S. § 41, would be held inapplicable on the ground that to hold otherwise would effect an unconstitutional interference with congressional power under U.S.C.A. Const. Art. 1, § 8, cl. 18, Art. 3, § 2, cl. 1. In *re Escheat of Moneys under Control of U. S. Dist. Court*, 1948, 57 A.2d 256, 358 Pa. 133.

3. Interest

Accretions of interest on unclaimed wages of seamen paid to Shipping Commissioner, while on deposit with him, were "moneys arising from unclaimed wages and effects of deceased seamen," and therefore payable into United States treasury. In *re Grant*, D.C.Mass.1931, 52 F.2d 171.

DISCHARGE

§ 641. Mode

All seamen discharged in the United States from merchant vessels engaged in voyages from a port in the United States to any foreign port, or, being of the burden of seventy-five tons or upward, from a port on the Atlantic to a port on the Pacific, or vice versa, shall be discharged and receive their wages in the presence of a duly authorized Coast Guard official to whom the duties of shipping commissioner under title 53 of the Revised Statutes have been delegated, except in cases where some competent court otherwise directs; and any master or owner of any such vessel who discharges any such seaman belonging thereto, or pays his wages within the United States in any other manner, shall be liable to a penalty of not more than \$50. R.S. § 4549; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Derivation. Act June 7, 1872, c. 322, § 22, 17 Stat. 266.

References in Text. For distribution of title 53 of the Revised Statutes, of which this section is a part, see note under section 543 of this title.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers

and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

Reference to shipping commissioner was changed to Coast Guard official to whom the duties of shipping commissioner have been delegated on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Cross References

Application of section to sail or steam vessels engaged in coastwise trade, see section 544 of this title.

Seamen on vessel in coastwise trade, etc., to be discharged and receive wages as provided in this and enumerated sections, see section 563 of this title.

Notes of Decisions

Discharge

Generally 2

Wrongful 3

Shipping commissioner 1

Wrongful, discharge 3

1. Shipping commissioner

While seamen in the coastwise service are not required to be shipped before a commissioner and sign articles, they may be so signed, as authorized by section

563 of this title, and when that is done the sections of this title relating to such contracts apply, and under this section and sections 642 and 643 of this title, a seaman can only be discharged by the master in the presence of a commissioner. *Hughes v. Southern Pac. Co.*, D.C. N.Y.1918, 274 F. 876.

For a voyage between the United States and the West Indies the crew may be paid off by the master elsewhere than in the presence of the shipping commissioner other than himself. *The Bark Brothers*, D.C.N.Y.1879, 10 Ben. 400, Fed. Cas.No.1,968. See, also, *U. S. v. French*, C.C.Pa.1881, 9 F. 369.

Section 546 of this title, makes a master or owner of a vessel bound on certain voyages a duly authorized shipping commissioner within the meaning of this section. *The Bark Brothers*, D.C.N.Y. 1879, 10 Ben. 400, Fed.Cas.No.1,968.

The discharge of a mariner employed on a vessel engaged in a voyage to be to "the West Indies and return" need not be signed in the presence of the shipping commissioner. *Burton v. Frye*, 1885, 29 N.E. 476, 139 Mass. 131.

Under the shipping acts, a seaman shipped in Maine for Barbados need not be paid off and discharged before a shipping commissioner. *U. S. v. French*, Pa. 1881, 14 Phila. 497.

2. Discharge—Generally

Seaman is bound to vessel for voyage, and vessel must retain him, unless his own good or safety of vessel justify putting him ashore in foreign port. *McAvey v. Emergency Fleet Corporation*, D.C. Mass.1926, 15 F.2d 405.

Master must make any discharge of seaman at foreign port, and must determine whether discharge is justified. *Id.*

Incompetence to perform duties of important position in which he has shipped will justify seaman's discharge abroad. *Id.*

A merchant seaman who was told during war time to leave ship after captain received an order from Army Transport

Service demanding that seaman be put off the ship, was not "discharged" by company operating ship, and hence could not recover from the company for his losses arising from his separation from his employment, where captain acted in good faith. *Aird v. Grace Line*, D.C.Pa. 1945, 63 F.Supp. 832, affirmed 169 F.2d 606, certiorari denied 69 S.Ct. 1521, 337 U.S. 959, 93 L.Ed. 1758.

Contention that chief engineer had no right to discharge assistant engineer could not be sustained where master sanctioned discharge. *The San Lucas*, D.C.N.Y.1932, 1 F.Supp. 883.

3. — Wrongful

Seaman, wrongfully discharged in foreign port, can sue and recover whatever damages he sustained, basing action on shipping articles. *McAvey v. Emergency Fleet Corporation*, D.C.Mass.1926, 15 F.2d 405.

Discharge of seaman, compelled to leave post through illness incapacitating him, without fault on his part, does not release ship or its owners. *Enochasson v. Freeport Sulphur Co.*, D.C.Tex.1925, 7 F.2d 674.

Where shipping articles did not define duties of mess boy, and he was hired through union, whose rules prescribed hours as from 6 a. m. to 7 p. m., master in absence of proof of any clear custom to contrary, may not discharge the mess boy because he declined to serve coffee to men at earlier hour. *The Royal Arrow*, D.C.Col.1918, 248 F. 546.

The discharge of a seaman at a port of call who had signed for a completed voyage was improper. *Alaska S. S. Co. v. Gilbert*, Wash.1916, 236 F. 715, 150 C.C. A. 47.

A ship operator sued by seaman for wrongful discharge was not liable for action of army transport service and naval intelligence ordering removal of seaman from ship in time of war. *Aird v. Grace Line*, D.C.Pa.1945, 63 F.Supp. 832, affirmed 169 F.2d 606, certiorari denied 69 S.Ct. 1521, 337 U.S. 959, 93 L.Ed. 1758.

§ 642. Accounting as to wages

Every master shall, not less than forty-eight hours before paying off or discharging any seaman, deliver to him, or, if he is to be discharged before a Coast Guard official to whom the duties of shipping commissioner have been delegated, to such Coast Guard official, a full and true account of his wages, and all deductions to be made therefrom on any account whatsoever; and in default shall, for each of-

fense, be liable to a penalty of not more than \$50. No deduction from the wages of any seaman except in respect of some matter happening after such delivery shall be allowed, unless it is included in the account delivered; and the master shall, during the voyage, enter the various matters in respect to which such deductions are made, with the amounts of the respective deductions as they occur, in the official log book, and shall, if required, produce such book at the time of the payment of wages, and, also, upon the hearing, before any competent authority, of any complaint or question relating to such payment. R.S. § 4550; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Derivation. Act June 7, 1872, c. 322, § 23, 17 Stat. 267.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1230, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury De-

partment, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

References to shipping commissioner were changed to Coast Guard official to whom the duties of shipping commissioner have been delegated and to such Coast Guard official on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Cross References

Application of section to sail or steam vessels engaged in coastwise trade, see section 544 of this title.

Seamen on vessel in coastwise trade, etc., to receive wages as provided in this and enumerated sections, see section 563 of this title.

Notes of Decisions

Generally 1 Deductions 2

1. Generally

Members of vessel's crew, who were paid for their services until date of their discharge on being advised that one falsely purporting to act as vessel's captain at time of hiring them had no authority to do so, were not entitled to further payments for wages and subsistence after such date. *Findley v. Red Top Super Markets*, C.A.Fla.1951, 188 F.2d 834, certiorari denied 72 S.Ct. 112, 342 U.S. 870, 96 L.Ed. 854.

This section which requires the master to furnish to seamen or to the commis-

sioner an account of wages and deductions to be made therefrom 48 hours before paying off, does not apply to the case of a seaman forfeiting his wages by desertion, which is provided for by section 706 of this title. *Stevenson v. Hare*, D.C.Cal.1874, Fed.Cas.No.13,416.

2. Deductions

The wrongful assault by a mate on one of the seamen on the voyage, to the damage of the ship, may be set off against his claim for wages, though the deduction is not entered in the log nor claimed in the statement made to the shipping-master. *The T. F. Whiton*, D.C.N.Y.1879, Fed.Cas.No.13,849.

§ 643. Continuous discharge book and certificate of identification—Issuance; form and contents

(a) Every seaman upon a merchant vessel of the United States of the burden of one hundred gross tons or upward, except vessels employed exclusively in trade on the navigable rivers of the United States, shall be furnished, at the option of the seaman, with a book to be known as a continuous discharge book or with a certificate of identification, which book or certificate shall be retained by the seaman and shall contain the signature of the seaman to whom it is so furnished and a statement of his nationality, age, personal description, photograph, thumbprint, and home address. Such books or certificates shall be issued by the Coast Guard officials to whom the duties of shipping commissioners have been delegated, or, at ports where no such Coast Guard officials have been appointed, by collectors or deputy collectors of customs, in such manner and form as the Commandant of the Coast Guard shall determine. Any individual, firm, partnership, corporation, or association which shall issue any such book or certificate, or make any statement or endorsement therein, except as authorized by the provisions of this section, or issue any imitation of any such book or certificate, shall be deemed guilty of a misdemeanor and shall be imprisoned not less than one month nor more than three months, in the discretion of the court.

Evidence of citizenship

(b) Any person applying for such book or certificate and claiming to be a citizen of the United States shall furnish satisfactory evidence of such citizenship.

Exhibition of discharge book or certificate before employment

(c) No seaman shall be employed on any vessel to which this section applies until he has exhibited a certificate of identification or a continuous discharge book to the Coast Guard official to whom the duties of shipping commissioner have been delegated, or in cases where seamen are not signed on before such Coast Guard official, to the master of the vessel: *Provided*, That the provisions of this subsection shall not apply to the employment of seamen at a foreign port or place, in which case seamen so employed shall be furnished a continuous discharge book or a certificate of identification, in accordance with the provisions of subsection (a) of this section, at the first port of entry in the United States or its territories at which the vessel arrives after such seamen are so employed.

Entries

(d) Upon the discharge of any seaman and the payment of his wages, the Coast Guard official to whom the duties of shipping commissioner have been delegated shall enter in the continuous discharge book of such seaman, if the seaman carries such a book, the name and official number of the vessel, the nature of the voyage (foreign, intercoastal, or coastwise), the class to which the vessel

belongs (steam, motor, sail, or barge), the date and place of the shipment and of the discharge of such seaman, the rating (capacity in which employed) then held by such seaman, and the signature of the person making such entries and nothing more.

Certificate of discharge; issuance; form and contents

(e) For the purpose of furnishing evidence of sea service in the case of seamen preferring the certificate of identification instead of the continuous discharge book, the Coast Guard shall provide a certificate of discharge, printed on durable paper, in such form as to specify the name and citizenship of the seaman to whom it is issued, the serial number of his certificate of identification, the name and official number of the vessel, the nature of the voyage (foreign, intercoastal, or coastwise), the class to which the vessel belongs (steam, motor, sail, or barge), the date and place of the shipment and of the discharge of such seaman, and the rating (capacity in which employed) then held by such seaman. Records of service entered in either continuous discharge books or certificates of discharge shall contain no reference to the character or ability of the seaman. The Coast Guard official to whom the duties of shipping commissioner have been delegated shall issue such certificate of discharge and make the proper entries therein, which certificate shall be signed by the seaman to whom it is issued and the master of the vessel and shall be witnessed by such Coast Guard official.

Records of discharge books and certificates

(f) There shall be maintained in the Coast Guard in Washington, District of Columbia, a record of every continuous discharge book, certificate of identification, certificate of discharge, and any other certificate issued by the Coast Guard, together with the name and address of the seaman to whom it is issued and of his next of kin, and certified copies of all entries made in continuous discharge books or certificates of discharge, which entries shall be forwarded to the Coast Guard by the Coast Guard official to whom the duties of shipping commissioner have been delegated or other person making such entries in accordance with the provisions of this section. Records so maintained shall not be open for general or public use or inspection.

Election to carry discharge book or certificate; penalty for discrimination because of

(g) Any person, partnership, company, or corporation who shall require any seaman employed or applying for employment to possess, produce, or carry a continuous discharge book, if and when such seaman possesses or carries an identification certificate, or to carry an identification certificate, if and when such seaman possesses and carries a continuous discharge book, or who shall exchange or give to any other person, partnership, company, or corporation information to cause discrimination against a seaman for electing to carry either an identification certificate or a continuous discharge

book, or to prevent a seaman from obtaining employment on that account, shall be deemed guilty of a misdemeanor; and, on conviction thereof, shall be punishable by a fine of not more than \$1,000 or imprisonment for not more than one year, at the discretion of the court.

Seamen shall apply for certificates of identification or continuous discharge books hereunder; and if any application contains any statement known by the applicant to be false, he shall be deemed guilty of a misdemeanor and, on conviction thereof before any district court of the United States, shall be fined not more than \$1,000 or imprisoned for not more than one year, in the discretion of the court.

Loss of discharge book or certificate

(h) In case of the loss of a continuous discharge book, a certificate of identification, or of any certificate of discharge by shipwreck or other casualty, the seaman shall be supplied with a duplicate of such continuous discharge book, certificate of identification, or certificate of discharge in which shall be entered all data that may be available from the copies of records kept by the Coast Guard. In other cases of loss the seaman may obtain a duplicate of such continuous discharge book, certificate of identification, or certificates of discharge, containing the same entries, upon a payment of a sum equivalent to the cost thereof to the Government to be determined from time to time by the Commandant of the Coast Guard.

Application to fishing or whaling vessels or yachts

(i) The provisions of this section shall not apply to fishing or whaling vessels or yachts.

Enforcement by Commandant of the Coast Guard

(j) The Commandant of the Coast Guard shall enforce this section as to all vessels of the United States subject to the provisions hereof through collectors of customs and other Government officers acting under the direction of the Coast Guard, and shall make such rules and regulations as he may deem necessary to carry out the provisions of this section.

Performance of duties by collector, deputies, or masters

(k) Where vessels are required to sign on and discharge the crew before a Coast Guard official to whom the duties of shipping commissioner have been delegated and no such Coast Guard official is appointed or is available the functions and duties required by subsections (d) and (e) of this section to be performed by such Coast Guard official may be performed by a collector or deputy collector of customs; and where vessels are not required to sign on and discharge the crew before a Coast Guard official the duties and functions required by subsections (d) and (e) of this section to be performed by such Coast Guard official shall be performed by the master

of such vessel. Any master who shall fail to perform such duties or functions shall be fined in the sum of \$50 for each offense.

Report by master of employment or discharge of seaman not shipped or discharged before Coast Guard official

(l) The master of every vessel subject to the provisions of this section shall submit, over his signature, reports to the Coast Guard of the employment, discharge, or termination of services of every seaman not shipped or discharged before a Coast Guard official to whom the duties of shipping commissioner have been delegated, which reports shall contain such of the following information as may be required by regulation of the Commandant of the Coast Guard: (1) name of vessel, official number, voyage number, port, date, description of voyage, name in full of each seaman, number of continuous discharge book or certificate of identification and of license, certificate of registry, or service, and efficiency for rating in which employed, age, citizenship, capacity in which engaged, date and place of engagement, date and place of discharge or separation from service of vessel, the percentage of citizens of the United States in the crew, and name in full of the master and the serial number of his license; (2) a statement showing (a) that the master has entered into an agreement with each seaman on board such vessel as required by law; (b) that at least 65 per centum of the deck crew (exclusive of licensed officers) are of a rating not less than able seamen; (c) that at least 75 per centum of the crew in each department are able to understand orders given by the officers; (d) that the vessel has in her service the number of lifeboatmen required by her certificate of inspection; (e) that each member of the crew possesses a license, certificate of registry, or certificate of service for the rating in which he is engaged, and (f) that each lifeboatman possesses a certificate of efficiency. The Commandant of the Coast Guard shall, by regulation, prescribe the form and content of such reports and time of submitting them. This subsection shall not apply to any ferry or any tug used in connection with a ferry operation, if such ferry or tug is employed exclusively in trade on the Great Lakes, lakes (other than the Great Lakes), bays, sounds, bayous, canals, and harbors, and is not engaged on an international voyage. Any master who shall violate any provision of this subsection or regulations established hereunder shall be subject to a penalty of \$500. R.S. § 4551; June 25, 1936, c. 816, § 3, 49 Stat. 1934; Mar. 24, 1937, c. 49, § 1, 50 Stat. 49; Oct. 17, 1940, c. 896, § 1, 54 Stat. 1200; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Derivation. Act June 7, 1872, c. 322, § 24, 17 Stat. 267.

1940 Amendment. Subsec. (l) added by Act Oct. 17, 1940.

1937 Amendment. Act Mar. 24, 1937, amended subsections (a)-(d) to read as above set forth, and added subsections (e)-(k). Section 2 of said Act also provided: "This Act shall take effect as to

vessels within the provisions of section 4551 of the Revised Statutes, as amended, as follows: (a) Upon its enactment in the case of such vessels engaged in foreign or intercoastal voyages, and (b) on June 25, 1937, in the case of all other such vessels: Provided, That, until June 25, 1937, the Secretary of Commerce is hereby authorized, pending the issuance of permanent certificates of identification and permanent certificates of discharge under such section, to provide for temporary certificates of identification and temporary certificates of discharge, which shall have the same force and effect as the permanent certificates."

1936 Amendment. Subsecs. (a)-(d) added by Act June 25, 1936.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1230, set out in note under section 241 of Title 5, Executive Departments and Government

Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

References to shipping commissioner were changed to Coast Guard official to whom the duties of shipping commissioner have been delegated or to such Coast Guard official, a reference to the United States local inspectors of steam vessels in subsec. (a) was omitted, "Commandant of the Coast Guard" was substituted for "Director of the Bureau of Marine Inspection and Navigation, subject to the approval of the Secretary of Commerce" in subsec. (a) and for "Secretary of Commerce" in subsecs. (h), (j), and (l), and "Coast Guard" was substituted for "Bureau of Marine Inspection and Navigation," on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Cross References

Coastwise trade vessels, application of section, see section 563 of this title.

Enforcement, application, separability and appropriation to carry out section, see sections 689-692 of this title.

Extension of subsection (l) to other vessels or waters in national interest, see section 643b of this title.

Fishing or whaling vessels or yachts, application of section, see section 690 of this title.

Notes of Decisions

Constitutionality 1
Construction with other laws 2
Failure to issue certificate 3
Injunctive relief 4

1. Constitutionality

Regulation of Secretary of Commerce requiring seamen to produce continuous discharge books to shipping commissioner before signing articles of agreement, pursuant to valid statutory delegation of power was reasonable, authorized and valid, but regulations, if beyond delegated power, are void. *Johnson v. Rylander*, D.C. Cal. 1937, 18 F. Supp. 689.

Provisions of this section, as amended in 1936, requiring seamen to have continuous discharge books and authorizing

Secretary of Commerce to promulgate regulations relating thereto were constitutional. *Ex parte Mulderig*, D.C. Tex. 1937, 18 F. Supp. 563.

2. Construction with other laws

Provisions of this section, as amended in 1936, requiring seamen to have continuous discharge books when considered in connection with section 689 of this title requiring Secretary of Commerce to enforce this section were sufficient, independently of any regulations promulgated by Secretary of Commerce, to authorize shipping commissioner at port to refuse to allow articles for voyage to be signed by seamen until they had applied for and received continuous discharge books. *Ex parte Mulderig*, D. C. Tex. 1937, 18 F. Supp. 563.

3. Failure to issue certificate

Where a seaman, who was left at an intermediate port because of illness, had signed a mutual release on discharge, required by section 644 of this title and by that section made a bar, but the lower courts found that he was only asked to sign for his wages, and that a discharge was not mentioned, and that the master did not give him the certificate of discharge required by this section, a decree allowing the seaman his wages, subsistence and medical attendance will be affirmed, especially in view of section 597 of this title, allowing a court on good cause shown to set aside

such release. *Pacific Mail S. S. Co. v. Lucas*, Cal.1922, 42 S.Ct. 308, 258 U.S. 266, 66 L.Ed. 614.

4. Injunctive relief

In view of valid regulation of Secretary of Commerce requiring seamen to produce continuous discharge book to shipping commissioner before signing articles of agreement, seamen were not entitled to mandatory injunction to force shipping commissioner to acknowledge and certify articles, regardless of whether seamen had continuous discharge books. *Johnson v. Rylander*, D.C.Cal. 1937, 18 F.Supp. 689.

§ 643a. Same; exception as to unrigged vessels

Provisions of section 643 of this title shall not apply to unrigged vessels except seagoing barges. June 16, 1938, c. 467, § 3, 52 Stat. 754.

Cross References

Definitions of "unrigged vessel," and "seagoing barge," see section 672c of this title.

§ 643b. Same; extension of section 643(l) to other vessels and waters in national interest

The President is authorized, whenever in his judgment the national interest requires, to extend the provisions of subsection (l) of section 643 of this title, to such additional class or classes of vessels and to such waters as he may designate. Oct. 17, 1940, c. 896, § 2, 54 Stat. 1201.

Historical Note

Delegation of Functions. For delegation to the Secretary of the Treasury of authority vested in the President by this section, see section 1(q) of Hx.Ord.No.

10637, Sept. 19, 1955, 20 F.R. 7025, set out as a note under section 301 of Title 3, The President.

§ 644. Rules for settlement

The following rules shall be observed with respect to the settlement of wages:

First. Upon the completion before a Coast Guard official to whom the duties of shipping commissioner have been delegated, of any discharge and settlement, the master or owner and each seaman, respectively, in the presence of such Coast Guard official, shall sign a mutual release of all claims for wages in respect of the past voyage or engagement, and such Coast Guard official shall also sign and attest it, and shall retain it in a book to be kept for that purpose, pro-

vided both the master and seamen assent to such settlement, or the settlement has been adjusted by such Coast Guard official.

Second. Such release, so signed and attested, shall operate as a mutual discharge and settlement of all demands for wages between the parties thereto, on account of wages, in respect of the past voyage or engagement.

Third. A copy of such release, certified under the hand and seal of such Coast Guard official to be a true copy, shall be given by him to any party thereto requiring the same, and such copy shall be receivable in evidence upon any future question touching such claims, and shall have all the effect of the original of which it purports to be a copy.

Fourth. In cases in which discharge and settlement before a Coast Guard official to whom the duties of shipping commissioner have been delegated are required, no payment, receipt, settlement, or discharge otherwise made shall operate as evidence of the release or satisfaction of any claim.

Fifth. Upon payment being made by a master before a Coast Guard official to whom the duties of shipping commissioner have been delegated, such official shall, if required, sign and give to such master a statement of the whole amount so paid; and such statement shall, between the master and his employer, be received as evidence that he has made the payments therein mentioned. R.S. § 4552; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Derivation. Act June 7, 1872, c. 322, § 24, 17 Stat. 267.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1230, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury De-

partment, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

References to shipping commissioner were changed to Coast Guard official to whom the duties of shipping commissioner have been delegated and to such Coast Guard official on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Cross References

Application of section to sail or steam vessels engaged in coastwise trade, see section 544 of this title.

Releases given under section, setting aside by court of competent jurisdiction, see section 597 of this title.

Seamen on vessel in coastwise trade, etc., to receive wages as provided in this and enumerated sections, see section 563 of this title.

Notes of Decisions

Generally 1

Consideration, release or discharge 4

Constraint, release or discharge 5

Medical treatment and cure 9

Misrepresentation, release or discharge 6

Receipts given by seamen 3

Release or discharge 3-8

Generally 3

Conclusive 7

Consideration 4

Constraint 5

Inconclusive 8

Misrepresentation 6

1. Generally

The acceptance by a seaman of part of an amount due as wages is no consideration for surrender of the right to the balance. *Jones v. U. S.*, D.C.Md.1922, 284 F. 721.

A seaman who shipped on a whaling voyage under a lay contract, but to whom no accounting was made by the owner of the vessel on the completion of the voyage, will not be held bound by a release given by him some time afterward, when greatly intoxicated, on the payment to him of an inadequate sum in settlement for his share of the catch. *The Barbara Hernster*, Wash.1906, 146 F. 732, 77 C.C.A. 158.

Where seamen, after their discharge, through their attorney made a settlement of their wages with the master, agreeing upon the time when their service ended, they are bound thereby, and cannot thereafter maintain an action to recover additional wages. *The George B. Ferguson*, D.C.Me.1905, 140 F. 955.

This section was only intended to relate to merchant seamen, and it has not been extended by Acts amendatory thereof or supplemental thereto. *Domenico v. Alaska Packers' Ass'n*, D.C.Cal. 1901, 112 F. 554, reversed on other grounds 117 F. 99, 54 C.C.A. 485.

In view of this section and other sections, a payment made to a seaman of wages not then earned, or one made on the termination of a voyage, but not in the presence of a commissioner, cannot be shown in defense to a libel by the seamen to recover wages shown to have been earned. *The Alexander M. Lawrence*, D.C.Ala.1900, 101 F. 135.

Contracts with seamen, upon a discharge before completion of voyage, concerning wages already earned, will be

set aside or disregarded by courts of admiralty, if inequitable. *The Hermine*, D.C.Or.1874, Fed.Cas.No.6,409.

An agreement by a needy mariner in a foreign port to take one-third of the amount of wages due in full payment is a nudum pactum. *Savin v. The Juno*, C.C.La.1873, Fed.Cas.No.12,390.

A settlement deliberately made by a seaman with the advice of his proctor will not be opened. *The Harmon*, D.C.Mass.1870, Fed.Cas.No.6,411.

2. Receipts given by seamen

Under this section, a release signed on payment at completion of a voyage by seamen who claimed further wages, but whose claim was not considered on its merits by the Commissioner, who told them it could later be determined by a court, cannot be used as a receipt in full. *Shanley v. U. S.*, D.C.N.Y.1921, 274 F. 691, reversed on other grounds 294 F. 502.

It is improper to require of a seaman a receipt in full of all claims, as a condition of the payment of his wages. *Whitney v. Eager*, D.C.1841, Fed.Cas.No. 17,584. See, also, *The Commerce*, D.C.Mass.1842, Fed.Cas.No.3,054.

A receipt for all "demands and dues" against a vessel, her master and officers, is not, upon its face, a receipt for assault and battery. *Mitchell v. Pratt*, C.C.Md.1841, Fed.Cas.No.9,668. See, also, *Payne v. Allen*, D.C.Mass.1855, Fed.Cas. No.10,855; *Hanson v. Fowle*, D.C.Or. 1871, Fed.Cas.No.6,042.

Where father, whose name was used as *prochein aml*, in a suit by a minor for wages, secretly settled the same, giving a receipt in full, such receipt should be set aside, and full wages decreed the minor. *The Etna*, D.C.Me. 1838, Fed.Cas.No.4,642.

A receipt by a seaman in full of all demands is no bar to a claim for which he has not received compensation. *Harden v. Gordon*, C.C.Me.1823, Fed.Cas.No. 6,047. See, also, *The Ringleader*, D.C.N.Y.1873, Fed.Cas.No.11,850; *The Rajah*, D.C.Mass.1852, Fed.Cas.No.11,538; *Piehl v. Balchen*, D.C.N.Y.1844, Fed.Cas.No.11,137; *The Mary Paulina*, D.C.Mass.1843, Fed.Cas.No.9,224; *Leak v. Isaacson*, D.C.N.Y. 1847, Fed.Cas.No.8,160; *Jackson v. White*, D.C.Pa.1806, Fed.Cas.No.7,151; *The Galloway C. Morris*, C.C.Pa.1870, Fed.Cas. No.5,204; *The David Pratt*, D.C.Me.1839, Fed.Cas.No.3,597.

A receipt acknowledging satisfaction of all claims for assault and battery is not binding unless shown to have been the result of a fair compromise, on compensation given. *Harden v. Gordon*, C.C.Me.1823, Fed.Cas.No.6,047. See, also, *Heard v. Rogers*, D.C.Mass.1854, Fed.Cas.No.6,298; *Hanson v. Fowle*, D.C.Or. 1871, Fed.Cas.No.6,042.

A receipt for less than the amount due will not be set aside where the legal rights of the party were doubtful, honestly contested, and opportunity given him to satisfy himself in relation thereto. *Thompson v. Faussat*, C.C.Pa. 1815, Fed.Cas.No.13,954.

A receipt given on payment of wages, stating that it is in full for all demands for assault, battery, etc., will not bar a suit for damages. *Thomas v. Lane*, C.C.Me.1813, Fed.Cas.No.13,902.

Receipts procured by improper conduct, imposing on seamen, or deceiving, overawing, or misleading them, will be disregarded, but when given with due deliberation and full explanation of circumstances will not be set aside on light grounds. *Whiteman v. The Neptune*, D.C.Pa.1806, Fed.Cas.No.17,569.

3. Release or discharge—Generally

A seaman's release in admiralty is not wholly invalid, but is jealously scrutinized to see that ward of admiralty has not been overreached. *The Standard*, C.C.A.N.Y.1939, 103 F.2d 437, certiorari denied 60 S.Ct. 106, 308 U.S. 560, 84 L.Ed. 471, rehearing denied 60 S.Ct. 137, 308 U.S. 636, 84 L.Ed. 528. See, also, *The S. W. Somers*, D.C.Md.1927, 22 F.2d 448.

One who claims that a seaman has signed away his rights to what in law is due him must be prepared to take the burden of sustaining the release as fairly made and fully comprehended by the seaman. *The Standard*, C.C.A.N.Y.1939, 103 F.2d 437, certiorari denied 60 S.Ct. 106, 308 U.S. 560, 84 L.Ed. 471, rehearing denied 60 S.Ct. 137, 308 U.S. 636, 84 L.Ed. 528.

A release fairly entered into and fairly safe-guarding rights of seaman should be sustained. *Id.*

Release signed by seaman is *prima facie* defense to libel for wages. *The Juneau*, D.C.La.1926, 11 F.2d 430.

The release signed before a shipping commissioner by discharged seamen on settlement of their wages for the time served, required by this section, does not operate as a consent to their unlawful discharge. *Brown v. U. S.*, D.C.Cal.1922, 283 F. 425.

The purpose of this section in requiring settlements with seamen to be made before a shipping commissioner is to guard against their being overreached by the master, by placing the parties on an equal footing; and all the parties need not appear before the commissioner and execute the release at the same time; but a master may leave with a commissioner a proposition for settlement, together with the wages due thereunder, and a release executed by him before the commissioner, and upon the acceptance of the money by the seamen, and the signing of the release by them, and its attestation by the commissioner, such release becomes effective, under this section. *Pettersson v. Empire Transp. Co.*, Cal.1901, 111 F. 931, 50 C.C.A. 63.

Seamen are treated as wards of admiralty court, so that, although not technically incapable of entering into a valid contract, contracts of seamen will be carefully scrutinized and, if there is any undue inequality in the terms or any sacrifice of rights on one side not compensated by extraordinary benefits on the other, the contract *pro tanto* will be set aside as inequitable. *Spillers v. South Atlantic S. S. Co. of Delaware*, D.C.Del.1942, 45 F.Supp. 2.

Seaman's release, executed in presence of and attested by shipping commissioner, under this section, is conclusive, in absence of showing of fraud or coercion. *Jensen v. Barber S. S. Lines*, 1920, 180 N.Y.S. 754, 110 Misc. 632

4. — Consideration

Seamen who, after joining in a libel for damages, settle their claims, and execute a release, on receiving a small payment and a cancellation of their indebtedness to the ship for advances and merchandise, without fraud or duress, cannot impeach the consideration for such release, and the suit as to them will be dismissed. *The Belvedere*, D.C.Cal.1900, 100 F. 498, affirmed 103 F. 299.

The court of admiralty is, as to all matters within its jurisdiction, a court of equity, and will inquire into the consideration for which seamen's release was given, notwithstanding that release is under seal. *Jensen v. Barber S. S. Lines*, 1920, 180 N.Y.S. 754, 110 Misc. 632.

5. — Constraint

Where seamen, discharged without their consent or fault before commencement of the voyage, who were entitled, under section 594 of this title, to an ad-

Note 5

ditional month's wages, were compelled to sign such a release to obtain payment of the wages admittedly due them, the release would be set aside and held not a bar to their recovery under section 594. *Brown v. U. S.*, D.C.Cal.1922, 283 F. 425.

A release of wages earned by a seaman, executed while on board the vessel on a voyage, and imprisoned in irons, on his being released from imprisonment and discharged will be presumed by a court of admiralty to have been given under constraint, and will not be given effect. *The Fred E. Sander*, D.C. Wash.1899, 95 F. 820.

Where seamen were coerced into signing mutual consent release in order to obtain wages when voyage was terminated at New York instead of Pacific Coast port, as provided in shipping articles, and release did not expressly acquit the obligation to pay repatriation money, operator of vessel was not thereby released from obligation to pay members of crew, except those shown by the evidence not to have incurred any such expense, the reasonable cost of transportation from New York to the Pacific Coast. *Murphy v. American Mail Line*, D.C.Wash.1945, 62 F.Supp. 97.

6. — Misrepresentation

On libel by a seaman, who had become ill during the voyage and gone ashore under a hospital permit, evidence warranted a finding that he neither sought nor desired a discharge, but was only asked to sign for his wages, and hence the discharge signed was ineffectual. *Pacific Mail S. S. Co. v. Lucas*, C.C.A.Cal. 1920, 264 F. 938, affirmed 42 S.Ct. 308, 258 U.S. 268, 66 L.Ed. 64.

Where seaman who had suffered heart attack, while lying in hospital bed, drugged with opiates, without legal advice or advice of friend, signed document purportedly releasing employer from all claims and document stated that employer would pay benefits according to disability benefit plan which stated that it would afford benefits beyond those payable by law and accompanying president's letter but seaman was not given president's letter which stated, in effect, that if seaman signed release he could not sue company for anything, release was void. *Lamon v. Standard Oil Co.*, D.C.La.1954, 117 F. Supp. 831.

In seaman's action for extra compensation after having executed a release, involving question whether release had been procured by fraud, under the evidence steamship owner had not been

guilty of fraud. *Jensen v. Barber S. S. Lines*, 1920, 180 N.Y.S. 754, 110 Misc. 632.

Evidence that, at the time when a foreign seaman, who manifestly could not speak or read English well enough to understand the nature of the instrument, signed a release of wages under this section, the shipping commissioner, without reading or explaining the release to him, told him to sign, and that afterwards he could go to the master, who was then absent, will warrant a jury in finding such a misrepresentation of its value and contents as would void the release. *Rosenberg v. Doe*, 1889, 20 N. E. 176, 148 Mass. 560.

7. — Conclusive

Seamen, who on expiration of term prior to end of voyage went ashore, after demanding their pay and informing the master that they would no longer be responsible for the safety of the ship, but who thereafter agreed to an extension of the articles and went back on board, and on end of voyage received full pay and a bonus of a month's pay, and signed a release of the ship under this section, which was not set aside for good cause under section 597 of this title, were not discharged, under section 596 of this title, requiring master or owner to pay seaman his wages within a specified time after he has been discharged or pay penalty. *Petterson v. U. S.*, D.C.N.Y.1921, 274 F. 1000.

Under the provisions of this section and section 641 of this title, requiring seamen to be discharged and paid their wages before a shipping commissioner, in whose presence a mutual release shall be signed and attested by him, if the parties agree upon a settlement, and further providing that "such release shall operate as a mutual discharge and settlement of all demands for wages between the parties thereto on account of wages in respect of the past voyage or engagement," a release so executed and attested without fraud or coercion is conclusive on the parties. *Petterson v. Empire Transp. Co.*, Cal.1901, 111 F. 931, 50 C.C.A. 63.

A release signed and attested as required by this section, without fraud or coercion, by seamen, on payment to them of wages conceded to be due them for a voyage, is conclusive upon them as a settlement of all claims on account of such wages, and the fact that they greatly needed the money paid them does not amount to legal duress or coercion; nor is the release rendered invalid because the master was not then present, but, after signing it on his part, had

gone on another voyage. The Pennsylvania, D.C.Cal.1899, 98 F. 744.

Third mate who knowingly and voluntarily signed shipping articles releasing master and owners of vessel from all claims for wages in respect of voyage or engagement was bound by such release which precluded recovery for overtime. Young v. U. S., D.C.Tex.1948, 78 F.Supp. 954.

Where to shipping articles, for voyage from Seattle to Philadelphia and return, was added a rider fixing cash sum to be paid in lieu of transportation, etc., in event vessel was "laid-up" in any Atlantic coast port for any reason for which crew was not responsible, and where crew left vessel at Philadelphia because their union was on strike on west coast and signed mutual release for all claims for voyage after being informed that the leaving of vessel would not entitle them to transportation, the mutual release was conclusive and precluded recovery of sum agreed on in lieu of transportation. Landro v. Pacific Atlantic S. S. Co., D.C.Wash.1937, 30 F.Supp. 538.

Mutual release signed by seaman releasing master, owner, and ship for all claims for wages for voyage was conclusive upon seaman, seeking to recover wages, in absence of fraud or coercion. The Aberdeen, D.C.Wash.1934, 7 F.Supp. 856.

Where, in an action by a mariner on an account annexed for work and labor, the declaration did not describe the voyage, and defendant filed a plea of a release and discharge, which was equally general, such discharge, which did not purport to be signed in the presence of a shipping commissioner, was not void on the face of the pleadings, and was admissible in evidence. Burton v. Frye, 1885, 29 N.E. 476, 139 Mass. 131.

A release given by a mariner on a voyage to the West Indies and return need not be signed in the presence of such commissioner, as that voyage is not mentioned in this section. *Id.*

Under the provision of this section that on completion, before a shipping commissioner, of any discharge and settlement, the master and seamen shall sign "a mutual release of all claims for wages in respect of the past voyages or engagements" in his presence, and that he shall sign and attest the same, signing such a release by a seaman, without fraud, coercion, or deception, bars the claim therein released, and such seaman cannot plead want of knowledge of

the contents of said release. Rosenberg v. Doe, 1888, 15 N.E. 510, 146 Mass. 191.

A release of a seaman's claim for wages, executed before a shipping commissioner in accordance with this section, is valid, though the seal of the commissioner is not attached thereto. *Id.*

8. — Inconclusive

Where a seaman, who was left at an intermediate port because of illness, had signed a mutual release on discharge, required by this section, and by that section made a bar, but the lower courts found that he was only asked to sign for his wages, and that a discharge was not mentioned, and that the master did not give him the certificate of discharge required by section 643 of this title, a decree allowing the seaman his wages, subsistence and medical attendance will be affirmed, especially in view of section 597 of this title, allowing a court on good cause shown to set aside such a release. Pacific Mail S. S. Co. v. Lucas, Cal.1922, 42 S.Ct. 308, 253 U.S. 266, 66 L.Ed. 614.

Where there had been no compliance with procedural requirements of this section for releases in settlement of wage claims by seamen and it appeared that releases executed by foreign seamen did not include the full amount due after the advances forbidden by section 599 of this title were eliminated and there was no showing that releases were fully comprehended by seamen after a full disclosure of their legal rights, releases executed by seamen were not binding. Mavromatis v. United Greek Shipowners Corp., C.A.Me.1950, 179 F.2d 310.

Where injury was considered much less serious at time release was given by seaman than injury eventually turned out to be and release was signed because of advice given by employer's doctor, that there was nothing wrong with seaman's arm and that pain was caused by toxemia from bad tonsils, whereas nearly four months' additional care was needed before seaman could go back to work, seaman's general release would not be sustained but seaman would be awarded additional maintenance and cure. The Standard, C.C.A.N.Y.1939, 103 F.2d 437, certiorari denied 60 S.Ct. 106, 308 U.S. 560, 84 L.Ed. 471, rehearing denied 60 S.Ct. 137, 308 U.S. 636, 84 L.Ed. 528.

Setting aside and disregarding releases signed by discharged employees of ship was not error, in libel by such employees to recover wages and penalties

Note 8

for wrongful withholding of wages as for wrongful discharge, in view of absence of vessel and master from port when release was signed, and surrounding circumstances. *Columbia River Smoked Fish Co. v. Lovsteen*, C.C.A. Wash.1927, 20 F.2d 122.

Seaman's release of wages was of no force, where ship's answer admitted, and master testified that he was paid no wages while sick in hospital. *The Jeanneau*, D.C.La.1923, 11 F.2d 430.

Where a seaman became sick without his fault during a voyage, and was placed in a hospital at a certain port, and on his discharge from the hospital in a penniless condition was required to sign a statement that he accepted his wages, which had been left with the United States consul as payment in full for the voyage in order to obtain such wages, he was entitled to recover full wages for the remainder of the voyage after deduction of the amount earned in other employment during the time of the voyage, since his status was not that of a discharged seaman, though he signed a receipt in full, and he did not waive his claim under the shipping articles by accepting such other employment. *Halvorsen v. U. S.*, D.C.Wash.1922, 284 F. 285.

Contracts by men to navigate a vessel to and from Alaska, and while there to work as fishermen during the season for taking and canning salmon, are

not, strictly speaking, for the performance of services as seamen, and are not within the provisions of this section, which make releases executed as therein provided on settlement with seamen conclusive on the parties; and where such men, on their return, were offered less than they were legally entitled to receive under their contract, and were impelled by their necessities to accept the same, and to sign releases in full, which they did under protest, a court of admiralty will not hold them concluded by such releases, although they were signed with full knowledge of their terms. *Domenico v. Alaska Packers' Ass'n*, D.C.Cal.1901, 112 F. 554, reversed on other grounds 117 F. 99, 54 C.C.A. 485.

Seamen's release of "all claims for wages" was applicable to the penalty for wages withheld, due seaman discharged without fault on his part from the master or owner, under section 596 of this title. *Cox v. Lykes Bros.*, Misc.1921, 189 N.Y.S. 268, affirmed 198 N.Y.S. 178, 204 App.Div. 442, reversed on other grounds 143 N.E. 228, 237 N.Y. 376.

9. Medical treatment and cure

This section does not absolve the vessel from liability for the expenses of the seaman's medical treatment and cure for a hurt received prior to discharge. *The W. L. White*, D.C.N.Y.1885, 25 F. 503.

§ 645. Certificate of character

Upon every discharge effected before a Coast Guard official to whom the duties of shipping commissioner have been delegated, the master shall make and sign, in the form given in the table marked "B," in the schedule annexed to this chapter, a report of the conduct, character, and qualifications of the persons discharged; or may state in such form, that he declines to give any opinion upon such particulars, or upon any of them; and such Coast Guard official shall keep a register of the same, and shall, if desired so to do by any seaman, give to him or indorse on his certificate of discharge a copy of so much of such report as concerns him. R.S. § 4553; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Derivation. Act June 7, 1872, c. 322, § 28, 17 Stat. 268.

References in Text. For table marked "B" in schedule referred to in the text, see section 713 of this title.

Transfer of Functions. All functions of all officers of the Department of the

Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950

Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

References to shipping commissioner were changed to Coast Guard official to whom the duties of shipping commissioner have been delegated and to such Coast Guard official on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Cross References

Coastwise trade—

Application of section to sail or steam vessels, see section 544 of this title.

Seamen on vessel to receive wages as provided in this and enumerated sections, see section 563 of this title.

Records of service entered in continuous discharge books or certificates of discharge to contain no reference to character or ability of seaman, see section 643(e) of this title.

§ 646. Discharge of crews in coastwise trade

Coast Guard officials to whom the duties of shipping commissioners have been delegated may discharge crews from any vessel engaged in the coastwise trade, or the trade between the United States and the Dominion of Canada, or Newfoundland, or the West Indies, or the Republic of Mexico, at the request of the master or owner of such vessel. June 19, 1886, c. 421, § 2, 24 Stat. 80; 1946 Reorg. Plan No. 3, §§ 101–104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Codification. This section is from Shipping Act June 19, 1886.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally

a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

Reference to shipping commissioner was changed to Coast Guard official to whom the duties of shipping commissioner have been delegated on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Notes of Decisions

Generally 1

Presence of shipping commissioner 2

1. Generally

There is no limitation in this section as to the effect of a certificate of dis-

charge and good conduct when issued by masters or commissioners, and it must be presumed that a certificate is intended to subserve the same office as certificates required to be issued by shipping commissioners to seamen on merchant ves-

sels in the foreign trade. In re Lind, C. C.Cal.1911, 192 F. 209.

2. Presence of shipping commissioner

While seamen in the coastwise service are not required to be shipped before a commissioner and sign articles, they may

be so signed, as authorized by section 563 of this title and when that is done the sections of this title relating to such contracts apply, and under sections 641-643 of this title, a seaman can only be discharged by the master in the presence of a commissioner. Hughes v. Southern Pac. Co., D.C.N.Y.1913, 274 F. 876.

PROTECTION AND RELIEF

§ 651. Coast Guard official as arbiter

Every Coast Guard official to whom the duties of shipping commissioner have been delegated shall hear and decide any question whatsoever between a master, consignee, agent, or owner, and any of his crew, which both parties agree in writing to submit to him; and every award so made by him shall be binding on both parties, and shall, in any legal proceedings which may be taken in the matter, before any court of justice, be deemed to be conclusive as to the rights of parties. And any document under the hand and official seal of such Coast Guard official purporting to be such submission or award, shall be prima-facie evidence thereof. R.S. § 4554; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Derivation. Act June 7, 1872, c. 322, § 25, 17 Stat. 267.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but

such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

References to "shipping commissioner" were changed to "Coast Guard official to whom the duties of shipping commissioner have been delegated" and to "such Coast Guard official" on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury. See note under section 1 of this title.

Cross References

Application of section to—

 Sail or steam vessels engaged in coastwise trade, see section 544 of this title.

 Seamen on vessels engaged in the coastwise trade, or the trade between the United States and Canada, Newfoundland, the West Indies, or Mexico, see section 563 of this title.

 Seamen on vessel in coastwise trade, etc., to receive wages as provided in this and enumerated sections, see section 563 of this title.

Notes of Decisions

Consul as arbitrator 1
 Court, award by 5
 Stipulation for arbitration 2
 Submission
 Determination 3
 Writing, necessity for 4

1. Consul as arbitrator

When a consul intervenes in a controversy between master and seamen, by mutual consent of the disputants, he acts as an arbitrator, and not as consul. 1895, 21 Op.Atty.Gen. 201.

2. Stipulation for arbitration

There is no "difference" between master and crew, within the meaning of a stipulation providing for arbitration, where wages due were agreed upon and demanded, but payment of them was refused. *The Sarah Jane*, D.C.N.Y.1833, Fed.Cas.No.12,348.

3. Submission—Determination

Provision of shipping articles was not "submission in writing" of controversy, within this section. *The Howick Hall*, D.C.La.1925, 10 F.2d 162.

Captain's verbal statement to shipping commissioner was not a "submission to arbitration." *Id.*

4. — Writing, necessity for

"An award by the shipping commissioner is not binding upon the parties unless made by authority of a submission in writing." *The W. F. Babcock*, C.C.A.N.Y.1898, 85 F. 978, 29 C.C.A. 514.

5. Court, award by

In the absence of an award of the shipping commissioner as to the amount due wrongfully discharged seamen, the court has jurisdiction to determine the amount due in libel by the seamen. "By section 4554, R.S. [this section], the award of a shipping commissioner is conclusive upon any question between the master and any of his crew, when the question is submitted to him by both parties in writing. There is no similar statute applicable to hearings before a consul. No reason appears in the present case, in the absence of settlement before a shipping commissioner at the end of a voyage, to depart from the general rule; that the final adjudication as between the parties of the amount due a person for services will be left for determination in a suit by the person claiming for services. Even in cases of settlement and release before a shipping commissioner, under section 4552, R.S. [section 644 of this title], the court having jurisdiction may, upon good cause shown, set aside such release and take such action as justice shall require." *The Donna Lane*, D.C.Wash.1924, 299 F. 977.

§ 652. Examination of witnesses

In any proceeding relating to the wages, claims, or discharge of a seaman, carried on before any Coast Guard official to whom the duties of shipping commissioner have been delegated, under the provisions of title 53 of the Revised Statutes, such Coast Guard official may call upon the owner, or his agent, or upon the master, or any mate, or any other member of the crew, to produce any log books, papers, or other documents in their possession or power, respectively, relating to any matter in question in such proceedings, and may call before him and examine any of such persons, being then at or near the place, on any such matter; and every owner, agent, master, mate, or other member of the crew, who, when called upon by such Coast Guard official, does not produce any such books, papers, or documents, if in his possession or power, or does not appear and give evidence, shall, unless he shows some reasonable cause for such default, be liable to a penalty of not more than \$100 for each offense; and, on applica-

tion made by such Coast Guard official, shall be further punished, in the discretion of the court, as in other cases of contempt of the process of the court. R.S. § 4555; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Derivation. Act June 7, 1872, c. 322, § 26, 17 Stat. 267.

References in Text. For distribution of title 53, sections 4501-4612, of the Revised Statutes, referred to in the text, of which this section is a part, see note under section 543 of this title.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government

Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

References to "shipping commissioner" were changed to "Coast Guard official" to whom the duties of shipping commissioner have been delegated" and to "such Coast Guard official" on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Cross References

Application of section to sail or steam vessels engaged in coastwise trade, see section 544 of this title.

Contempts—

Contempts constituting crimes, see section 402 of Title 18, Crimes and Criminal Procedure.

Power of court, see section 401 of said Title 18.

Log books, see section 201 et seq. of this title.

Federal Rules of Civil Procedure

Subpoena, see rule 45, 28 U.S.C.A.

Federal Rules of Criminal Procedure

Subpoena, see rule 17, 18 U.S.C.A.

§ 653. Complaint that vessel is unseaworthy

If the first and second officers under the master or a majority of the crew of any vessel bound on any voyage shall, before the vessel shall have left the harbor, discover that the vessel is too leaky or is otherwise unfit in her crew, body, tackle, apparel, furniture, provisions, or stores to proceed on the intended voyage, and shall require such unfitness to be inquired into, the master shall, upon the request of the first and second officers under the master or such majority of the crew, forthwith apply to the judge of the district court of that judicial district, if he shall there reside, or if not, to some justice of the peace of the city, town, or place for the appointment of sur-

veyors, as provided in section 654 of this title, taking with him two or more of the crew who shall have made such request; and any master refusing or neglecting to comply with these provisions shall be liable to a penalty of \$500. This section shall not apply to fishing or whaling vessels or yachts. R.S. § 4556; Dec. 21, 1898, c. 28, §§ 7, 26, 30 Stat. 757, 764.

Historical Note

Derivation. Act July 20, 1790, c. 29, § 3, 1 Stat. 132.

Codification. Upon incorporation into the Code, R.S. § 4556, as amended by Act Dec. 21, 1898, read as above set forth.

R.S. § 4556, as enacted originally read: "If the mate or first officer under the master, and a majority of the crew of any vessel, bound on a voyage to any foreign port, shall, after the voyage is begun, and before the vessel shall have left the land, discover that the vessel is too leaky, or is otherwise unfit in her crew, body, tackle, apparel, furniture, provisions, or stores, to proceed on the

intended voyage, and shall require such unfitness to be inquired into, the master shall, upon the request of the mate or other officer and such majority, forthwith proceed to or stop at the nearest or most convenient port or place where such inquiry can be made, and shall there apply to the judge of the district court of that judicial district, if he shall there reside, or if not, to some justice of the peace of the city, town, or place, taking with him two or more of the crew who shall have made such request."

Exception. Application of and exceptions to Act Dec. 21, 1898, see note under section 569 of this title.

Cross References

Mutiny or revolt on shipboard, see sections 2192 and 2193 of Title 18, Crimes and Criminal Procedure.

Notes of Decisions

Crew

Demand for survey 3

Refusal to serve 4

Evidence 7

Exclusiveness of remedy 1

Findings 8

Presumptions 6

Seaworthiness 2, 3

Warranty 3

1. Exclusiveness of remedy

Provisions of this section relating to the holding of surveys on vessels alleged to be unseaworthy are not exclusive of other remedies than those therein contained. *The Heroe*, D.C.Del.1884, 21 F. 525.

2. Seaworthiness

"Seaworthiness" is a relative term, and is ascertained ordinarily by the nature of the voyage, or the use for which the vessel is to be employed. *Henry Gillen's Sons Lighterage v. Fernald*, C.C.A.N.Y. 1923, 294 F. 520.

Seaworthiness implies, not alone that the vessel be staunch and sound, but

that she be properly manned, and the employment of a mate, known to be unfit, constitutes unseaworthiness as to the seamen under him. *The Ralph*, D.C.Cal. 1923, 293 F. 269, affirmed 299 F. 52, certiorari denied 45 S.Ct. 96, 266 U.S. 614, 69 L.Ed. 468.

To render a vessel seaworthy with respect to her crew, she must be reasonably safe, and equipped with reasonably necessary and customary requisites and appliances, but she is not required to have the best appliances. *Adams v. Bortz*, C.C.A.N.Y.1922, 279 F. 521.

A vessel is not unseaworthy because she has no handrail up, while lying alongside a wharf discharging cargo. *Hanrahan v. Pacific Transport Co.*, C.C.A.N.Y.1919, 262 F. 951, certiorari denied 40 S.Ct. 345, 252 U.S. 579, 64 L.Ed. 728.

A staunch vessel, with a full crew, which does not leak to exceed four inches an hour, was not unseaworthy. *The Moslem*, D.C.N.Y.1846, Fed.Cas.No.9,875.

3. — Warranty

Warranty of seaworthiness does not mean that ship can weather all storms,

but merely means that the vessel is reasonably fit to carry cargo, and if it is not, owner is liable, irrespective of any fault on his part. *Boudoin v. Lykes Bros. S. S. Co.*, 1955, 75 S.Ct. 382, 348 U. S. 336, 99 L.Ed. 354, modified on other grounds, 76 S.Ct. 38, 350 U.S. 811, 100 L. Ed. 727.

Warranty of seaworthiness is species of liability without fault, but it does not mean that shipowner is liable for injuries resulting from every sailor's brawl. *Id.*

Warranty of seaworthiness is equally applicable to ship and gear on one hand, and ship's personnel on the other, and as to the latter, liability depends on whether assault by seaman was within usual and customary standards of the calling, or was case of seaman with wicked disposition, propensity to evil conduct, savage and vicious nature. *Id.*

4. Crew—Refusal to serve

The importance of obedience and discipline on a ship, to the end that it may proceed on its voyage, imposes on the crew, after they have commenced the voyage, the duty to use reasonable means to ascertain the actual condition of the vessel, including a resurvey, if that be practicable, before refusal to serve for unseaworthiness. * * * But they are not bound to serve on a vessel which is unseaworthy, and they should be acquitted of the charge of desertion or revolt, or endeavor to revolt, if in apprehension of danger they leave the ship or refuse to serve, asserting and believing on reasonable grounds that the ship is unseaworthy, although it may turn out on further close investigation that it was in fact seaworthy, for reasonable apprehension of loss of life or limb is set above delay of the vessel. *Hamilton v. U. S.*, C.C.A.Va.1920, 268 F. 15, certiorari denied 41 S.Ct. 15, 254 U.S. 645, 65 L.Ed. 454.

Where a contract between seamen for a fishing voyage to Alaska and return declared that men refusing to work should be considered as having quit the employment, but that men discharged should be given free transportation to the home port, including maintenance, but that this obligation should not apply to men quitting, such provisions do not justify seamen in determining on their own initiative that the vessel was unseaworthy and in a body refusing to make the voyage from Alaska back to Seattle. *Heino v. Libby, McNeill & Libby*, 1921, 205 P. 854, 116 Wash. 148.

Where a sailing vessel out of Seattle, engaged in a fishing enterprise, leaked

on the voyage to Alaska, but the leak was repaired, seamen were not justified in pronouncing the vessel unseaworthy, and refusing to make the return voyage, where they did not demand a survey pursuant to this section, and the master and owner's representatives having had surveys made by competent and disinterested persons, including officers of a marine cutter, the seamen were bound by such surveys and could not have the question of seaworthiness determined by a jury in an action for wages, but they had to be deemed to have deserted the vessel and forfeited their wages. *Id.*

Where seamen confederated together and pronounced a ship unseaworthy and refused to make the return voyage, though competent surveyors found it seaworthy, the owner was not bound by labor certificates issued because of such circumstances, but on return of the seamen was entitled to repudiate them. *Id.*

Where a vessel was compelled, in consequence of springing a leak, to put back for repairs and the seamen made no application for repairs, under the laws of the United States, but the owners voluntarily made repairs and the vessel, after the repairs, was, in the opinion of the master carpenter and three shipbuilders, perfectly seaworthy, though seven journeymen carpenters were of the opinion that she was not seaworthy, and on that ground the crew refused to proceed on the voyage, and no freight having been earned, and the loss of the voyage not being imputable to the master or owners, the seamen were not entitled to wages, and they could not set up the opinion of the journeymen to excuse the breach of their contract and justify the demand of wages. *Porter v. Andrews*, N.Y.1812, 9 Johns. 350.

5. — Demand for survey

Seamen who have signed shipping articles, if they have reason to believe the vessel to be unseaworthy, may demand a survey; but they are not permitted to determine for themselves the question of seaworthiness, nor to leave the vessel on the ground of unseaworthiness without having required a survey. *The C. F. Sargent*, D.C.Wash.1899, 95 F. 179.

If seamen really believe, upon reasonable ground, that a vessel is unseaworthy, and ask for a survey, they are not bound to go to sea in her until such request is granted. *U. S. v. Givings*, D. C.Mass.1844, Fed.Cas.No.15,212.

Though a sailor has signed shipping articles before going aboard, he may, on

examining the vessel and finding its appliances for towing unsafe for one working about the mainsail, stipulate, as a condition to his going on the voyage, that the mainsail shall not be used. *Keating v. Pacific Steam-Whaling Co.*, 1899, 58 P. 224, 21 Wash. 415.

6. Presumptions

While seamen are not bound to serve on a vessel which is unseaworthy, or which they believe on reasonable grounds is unseaworthy, though it may turn out on further investigation that it was in fact seaworthy, the presumption is in favor of seaworthiness. *Hamilton v. U. S.*, C.C.A.Va.1920, 268 F. 15, certiorari denied 41 S.Ct. 15, 254 U.S. 645, 65 L. Ed. 454.

The presumption that a ship is seaworthy when she undertakes a voyage is rebuttable, and may be overcome, not only by direct proof, but also by circumstances. *La Fernier v. Soo River Lighter & Wrecking Co.*, 1902, 89 N.W. 353, 129 Mich. 596, 8 Detroit Leg.N. 1065.

7. Evidence

In action by seaman against owner and operator of vessel for injuries and loss of wages resulting from assault by fellow seaman on board vessel, evidence was sufficient to sustain findings that assailant had such savage disposition as to endanger others working on ship, that he was not equal in disposition to ordinary men of that calling, and that crew with assailant as member was not competent to meet contingencies of voyage, and to support cause of action for

breach of warranty of seaworthiness. *Boudoin v. Lykes Bros. S. S. Co.*, 1955, 75 S.Ct. 382, 348 U.S. 336, 99 L.Ed. 354, modified on other grounds, 76 S.Ct. 38, 350 U.S. 811, 100 L.Ed. 727.

In an action by the captain of a scow to recover for household goods and clothing lost when the scow capsized during a storm, evidence did not show that the scow was unseaworthy, in that its decks were rotten and full of holes. *Razukas v. New York Trap Rock Co.*, D.C.N.J.1918, 252 F. 311.

Unseaworthiness justifies a crew in leaving a vessel, and entitles them to the payment of their wages for the month or voyage; and the discharge of seamen and unseaworthiness may be proved in the same manner as other facts are proved before a court or jury. *The Heroe*, D.C.Del.1884, 21 F. 525.

8. Findings

In action by seaman against owner and operator of vessel for injuries and loss of wages resulting from assault by fellow seaman on board vessel, findings that assailant was person of dangerous propensities and proclivities at time of assault, that he was person of violent character, belligerent disposition, excessive drinking habits, disposed to fighting and making threats and assaults, warranted recovery for breach of warranty of seaworthiness. *Boudoin v. Lykes Bros. S. S. Co.*, 1955, 75 S.Ct. 382, 348 U.S. 336, 99 L.Ed. 354, modified on other grounds, 76 S.Ct. 38, 350 U.S. 811, 100 L.Ed. 727.

§ 654. Proceedings on examination of vessel

The judge, or justice, in a domestic port, shall, upon such application of the master or commander, issue his precept, directed to three persons in the neighborhood, the most experienced and skillful in maritime affairs that can be procured; and whenever such complaint is about the provisions one of such surveyors shall be a physician or a surgeon of the Public Health Service, if such service is established at the place where the complaint is made. It shall be the duty of such surveyors to repair on board such vessel and to examine the same in respect to the defects and insufficiencies complained of, and make reports to the judge, or justice, as the case may be, in writing, under their hands or the hands of two of them whether in any or in what respect the vessel is unfit to proceed on the intended voyage, and what addition of men, provisions, or stores, or what repairs or alterations in the body, tackle, or apparel will be necessary; and upon such report the judge or justice shall adjudge and shall indorse on his report his judgment whether the vessel is fit

to proceed on the intended voyage, and, if not, whether such repairs can be made or deficiencies supplied where the vessel then lies, or whether it is necessary for her to proceed to the nearest or most convenient place where such supplies can be made or deficiencies supplied; and the master and the crew shall, in all things, conform to the judgment. The master or commander shall, in the first instance, pay all the costs of such review, report, or judgment, to be taxed and allowed on a fair copy thereof, certified by the judge or justice. But if the complaint of the crew shall appear upon the report and judgment to have been without foundation, the master or commander, or the owner or consignee of such vessel, shall deduct the amount thereof, and of reasonable damages for the detention, to be ascertained by the judge or justice, out of the wages of the complaining seamen. This section shall not apply to fishing or whaling vessels or yachts. R.S. § 4557; Dec. 21, 1898, c. 28, §§ 8, 26, 30 Stat. 757, 764; July 1, 1902, c. 1370, 32 Stat. 712.

Historical Note

Derivation. Act July 20, 1790, c. 29, § 3, 1 Stat. 132.

Codification. Upon incorporation into the Code, R.S. § 4557, as amended by Act Dec. 21, 1898, read as above set forth.

R.S. § 4457, as enacted originally read: "The judge or justice shall, upon such application of the master or commander, issue his precept directed to three persons in the neighborhood, the most skillful in maritime affairs that can be procured, requiring them to repair on board such vessel, and to examine the same in respect to the defects and insufficiencies complained of, and to make report to him, the judge or justice, as the case may be, in writing under their hands, or the hands of two of them, whether in any or in what respect the vessel is unfit to proceed on the intended voyage, and what addition of men, provisions, or stores, or what repairs or alterations in the body, tackle, or apparel will be necessary; and upon such report the judge or justice shall adjudge, and shall indorse on the report his judgment, whether the vessel is fit to proceed on the intended voyage; and if not, whether such repairs can be made or deficiencies supplied where the vessel then lies, or whether it is necessary for her to return to the port from whence she first sailed, to be there refitted; and

the master and crew shall in all things conform to the judgment. The master or commander shall, in the first instance, pay all the costs of such view, report, and judgment, to be taxed and allowed on a fair copy thereof, certified by the judge or justice. But if the complaint of the crew shall appear, upon the report and judgment, to have been without foundation, the master or commander, or the owner or consignee of such vessel, shall deduct the amount thereof, and of reasonable damages for the detention, to be ascertained by the judge or justice, out of the wages growing due to the complaining seamen."

Change of Name. By Act July 1, 1902, the Marine Hospital Service was designated the Public Health and Marine Hospital Service. Act Aug. 14, 1912, c. 288, § 1, 37 Stat. 309, which changed name of Public Health and Marine Hospital Service of the United States to Public Health Service was repealed by Act July 1, 1944, c. 373, Title VIII, § 813, 58 Stat. 714, renumbered by Acts Aug. 13, 1946, c. 958, § 5, 60 Stat. 1049; Feb. 28, 1948, c. 83, § 9(b), 62 Stat. 47; and July 30, 1956, c. 779, § 3(b), 70 Stat. 720. Said Act July 1, 1944, retained the name Public Health Service.

Exception. Application of and exceptions to Act Dec. 21, 1898, see note under section 569 of this title.

§ 655. Refusal to proceed when vessel found seaworthy

If, after judgment that such vessel is fit to proceed on her intended voyage, or after procuring such men, provisions, stores, repairs, or alterations as may be directed, the seamen, or either of them, shall

refuse to proceed on the voyage, he shall forfeit any wages that may be due him. This section shall not apply to fishing or whaling vessels or yachts. R.S. § 4558; Dec. 21, 1898, c. 28, §§ 9, 26, 30 Stat. 757, 764.

Historical Note

Derivation. Act July 20, 1790, c. 29, § 3, 1 Stat. 132.

Codification. Upon incorporation into the Code, R.S. § 4558, as amended by Act Dec. 21, 1898, read as set forth above.

R.S. § 4558, as enacted originally read: "If after judgment that such vessel is fit to proceed on her intended voyage, or after procuring such men, provisions, stores, repairs, or alterations as may be directed, the seamen, or either of them, shall refuse to proceed on the voyage, it shall be lawful for any justice of the peace to commit, by warrant under his hand and seal, every such seaman who refuses to the common jail of the county, there to remain without bail or mainprize until he has paid double the sum advanced to him at the time

of subscribing the contract for the voyage, together with such reasonable costs as are allowed by the justice, and inserted in the warrant; and the sureties of such seaman, in case he has given any, shall remain liable for such payment; nor shall any such seaman be discharged upon any writ of habeas corpus or otherwise, for want of any form of commitment, or other previous proceedings, until such sum is paid by him or his surety, if sufficient matter be made to appear, upon the return of such habeas corpus, and an examination then had, to detain him for the causes hereinbefore assigned."

Exception. Application of and exceptions to Act Dec. 21, 1898, see note under section 569 of this title.

Notes of Decisions

Conclusiveness of survey 1
Desertion, laws as affecting 2

1. Conclusiveness of survey

Where a sailing vessel out of Seattle engaged in a fishing enterprise leaked on the voyage to Alaska, but the leak was repaired, seamen were not justified in pronouncing the vessel unseaworthy and refusing to make the return voyage, where they did not demand a survey pursuant to section 653 of this title and the master and owner's representatives having had surveys made by competent and disinterested persons, including officers of a marine cutter, the seamen were bound by such surveys and could not have the question of seaworthiness determined by a jury in an action for wages, but they had to be deemed to have de-

serted the vessel and forfeited their wages. *Heino v. Libby, McNeill & Libby*, 1921, 205 P. 854, 116 Wash. 148.

Where seamen confederated together and pronounced a ship unseaworthy and refused to make the return voyage, though competent surveyors found it seaworthy, the owner was not bound by labor certificates issued because of such circumstances, but on return of the seamen was entitled to repudiate them. *Id.*

2. Desertion, laws as affecting

Under this and other sections of this title seamen become obligated to merchant vessels from the time they sign the shipping articles, and from that time may incur the penalties of desertion. *Tucker v. Alexandroff*, Pa.1902, 22 S.Ct. 195, 183 U.S. 424, 46 L.Ed. 264.

§ 656. Appointment of inspectors by consul in foreign port

Upon a complaint in writing, signed by the first and second officers or a majority of the crew of any vessel, while in a foreign port, that such vessel is in an unsuitable condition to go to sea because she is leaky or insufficiently supplied with sails, rigging, anchors, or any other equipment, or that the crew is insufficient to man her, or that her provisions, stores, and supplies are not or have not been

during the voyage sufficient or wholesome, thereupon, in any of these or like cases the consul shall cause to be appointed three persons of like qualifications with those described in section 654 of this title, who shall proceed to examine into the cause of complaint and who shall proceed and be governed in all their proceedings as provided by said section. This section shall not apply to fishing or whaling vessels or yachts. R.S. § 4559; Dec. 21, 1898, c. 28, §§ 10, 26, 30 Stat. 757, 764; Apr. 5, 1906, c. 1366, § 3, 34 Stat. 100; Mar. 4, 1915, c. 153, § 5, 38 Stat. 1165.

Historical Note

Derivation. Acts July 20, 1840, c. 48, § 5 Stat. 396; July 29, 1850, c. 27, § 6, 9 Stat. 441.

Codification. R.S. § 4559, read: "A complaint in writing, signed by the first, or the second and third officers and a majority of the crew," and concluded as follows: "Shall appoint two disinterested, competent, practical men, acquainted with maritime affairs, to examine into the causes of complaint, who shall, in their report, state what defects and deficiencies, if any, they find to be well founded, as well as what, in their judgment, ought to be done to put the vessel in order for the continuance of her voyage."

Act Dec. 21, 1898, eliminated the reference to the third officer, and changed

the concluding portion of the section to read substantially as above set forth.

The word "consul" was followed originally by the words "or a commercial agent who may discharge any of the duties of a consul." The grade of commercial agent was abolished by Act Apr. 5, 1906.

Act Mar. 4, 1915 changed the words "the first or second officer and a majority of the crew" to read as in the present text, substituted "or" for "and" between "sufficient" and "wholesome," and made some changes of phraseology.

Exception. Application of and exceptions to Act Dec. 21, 1898, see note under section 569 of this title.

Cross References

Consular powers in relation to U. S. mariners of senior officer present afloat, see section 5948 of Title 10, Armed Forces.

Notes of Decisions

Duty of crew before survey 1
Survey demandable by crew 2

1. Duty of crew before survey

A crew is obliged to stand by the ship and obey the master until the voyage is done, unless she come to such a pass as to be dangerous to life, or they have reasonable ground for so believing; but, in case of a difference between them and the master as to seaworthiness, it is the better practice to demand a survey in port. *The Condor*, D.C.N.Y.1912, 196 F. 71.

So long as a master does what he can to obtain impartial opinion as to seaworthiness, his decision must control as to whether the voyage shall break up, and the whole ship's company is bound by it. *Id.*

2. Survey demandable by crew

The crew may demand a survey in a foreign port, where they have reasonable grounds to believe the vessel to be unseaworthy. *The Hibernia*, D.C.Mass.1844, Fed.Cas.No.8,455.

§ 657. Report of inspectors

The inspectors appointed by any consul, in pursuance of section 656 of this title, shall have full power to examine the vessel and whatever is aboard of her, so far as is pertinent to their inquiry,

and also to hear and receive any other proofs which the ends of justice may require; and if, upon a view of the whole proceedings, the consul is satisfied therewith, he may approve the whole or any part of the report, and shall certify such approval; or if he dissents, he shall certify his reasons for dissenting. R.S. § 4560; Apr. 5, 1906, c. 1366, § 3, 34 Stat. 100.

Historical Note

Derivation. Act July 20, 1840, c. 48, 5 Stat. 396.

Codification. The words "or commercial agent" following "by any consul"

and "or other commercial agent" following "the consul" were omitted from the Code upon the abolition of the grade of commercial agent by Act Apr. 5, 1906.

Notes of Decisions

1. Conclusiveness of report

A report of seaworthiness made by marine surveyors, upon the crew demanding to leave on account of unsea-

worthiness, is not conclusive, in a subsequent action for wages, after leaving. *Bucker v. Klorkgeter*, D.C.N.Y.1949, Fed. Cas.No.2,083.

§ 658. Discharge of crew on account of unseaworthiness; penalty for sending unseaworthy vessel to sea

The inspectors in their report shall also state whether in their opinion the vessel was sent to sea unsuitably provided in any important or essential particular, by neglect or design, or through mistake or accident; and in case it was by neglect or design, and the consular officer approves of such finding, he shall discharge such of the crew as request it, and shall require the payment by the master of one month's wages for each seaman over and above the wages then due, or sufficient money for the return of such of the crew as desire to be discharged to the nearest and most convenient port of the United States, or by furnishing the seamen who so desire to be discharged with employment on a ship agreed to by them. But if in the opinion of the inspectors the defects or deficiencies found to exist have been the result of mistake or accident, and could not, in the exercise of ordinary care, have been known and provided against before the sailing of the vessel, and the master shall in a reasonable time remove or remedy the causes of complaint, then the crew shall remain and discharge their duty. If any person knowingly sends or attempts to send or is party to the sending or attempting to send an American ship to sea, in the foreign or coastwise trade, in such an unseaworthy state that the life of any person is likely to be thereby endangered, he shall, in respect of each offense, be guilty of a misdemeanor, and shall be punished by a fine not to exceed \$1,000 or by imprisonment not to exceed five years, or both, at the discretion of the court, unless he proves that either he used all reasonable means to insure her being sent to sea in a seaworthy state, or that her going to sea in an unseaworthy state was, under the circumstances, reasonable and justifiable, and for the purposes of giving

that proof he may give evidence in the same manner as any other witness. This section shall not apply to fishing or whaling vessels or yachts. R.S. § 4561; June 26, 1884, c. 121, § 4, 23 Stat. 54; Dec. 21, 1898, c. 28, §§ 11, 26, 30 Stat. 758, 764.

Historical Note

Derivation. Act July 20, 1840, c. 48, § 5 Stat. 396.

Codification. R.S. § 4561, read "The inspectors in their report shall also state whether, in their opinion, the vessel was sent to sea unsuitably provided in any important or essential particular, by neglect or design, or through mistake or accident, and in case it was by neglect or design, and the consul or other commercial agent approves of such finding, he shall discharge such of the crew as require it, each of whom shall be entitled to three months' pay in addition to his wages to the time of discharge; but if, in the opinion of the inspectors, the defects or deficiencies found to exist have been the result of mistake or accident, and could not, in the exercise of ordinary care, have been known and provided against before the sailing of

the vessel, and the master shall, in a reasonable time, remove or remedy the causes of complaint, then the crew shall remain and discharge their duty; otherwise they shall, upon their request, be discharged, and receive each one month's wages in addition to their pay up to the time of discharge."

Act June 26, 1884, amended section generally.

Act Dec. 21, 1898 added the provisions at the end of the first sentence beginning with the words "or sufficient money" and last two sentences pertaining to punishment and applicability of section.

Exception. Application of and exceptions to Act Dec. 21, 1898, see note under section 569 of this title.

Cross References

Offenses classified, see section 1 of Title 18, Crimes and Criminal Procedure.

Profits from dealing with discharged seamen, prohibition, see section 1187 of Title 22, Foreign Relations and Intercourse.

Notes of Decisions

Discharge of crew 5

Seaworthiness 1-5

Liability 4

Obligation of owner 3

Warranty 2

1. Seaworthiness

Seaworthiness implies, not alone that the vessel be staunch and sound, but that she be properly manned, and the employment of a mate, known to be unfit, constitutes unseaworthiness as to the seamen under him. *The Rolph*, D.C.Cal. 1923, 293 F. 269, affirmed 299 F. 52, certiorari denied 45 S.Ct. 96, 286 U.S. 614, 69 L.Ed. 468.

2. — Warranty

"The warranty of seaworthiness" applied to a seaman is that he is equal in disposition and seamanship to the ordinary men in the calling and the question of his equality is to be judged by the usual standards of the calling. *Quintin*

v. Sprague S. S. Co., D.C.N.Y.1957, 149 F.Supp. 226.

Where seaman aboard vessel committed a murderous assault upon another while in a delirium brought on by indulgence of liquor, seaman was not equal in disposition to ordinary men of his calling and his presence in crew breached warranty of seaworthiness. *Id.*

3. — Obligation of owner

The owners of a dredge built in the United States for use on the Panama Canal were not under obligation to seamen employed thereon while being towed to the Isthmus of Panama to make such dredge as seaworthy as they would be required to make an ordinary ship, but only to make it reasonably safe. *State of Maryland v. Ellicott*, D.C.Md.1910, 179 F. 127.

4. — Liability

In view of this section, the purpose of which it is to protect seamen, a seaman does not assume the risk from such

unseaworthy state so as to preclude a recovery from the vessel or owner for an injury resulting therefrom, but the vessel by going to sea in violation of this section assumes all resulting risks. *The Fullerton*, Hawaii 1908, 167 F. 1, 92 C.C.A. 463.

5. Discharge of crew

Evidence of unseaworthiness of vessel, even after recommendations of surveyors were complied with, entitled crew to discharge. *The Jacob Luckenbach*, D.C. La.1929, 38 F.2d 381.

§ 659. Payment of charges for inspection

The master shall pay all such reasonable charges for inspection under such complaint as shall be officially certified to him under the hand of the consul; but in case the inspectors report that the complaint is without any good and sufficient cause, the master may retain from the wages of the complainants, in proportion to the pay of each, the amount of such charges, with such reasonable damages for detention on that account as the consul directing the inquiry may officially certify. R.S. § 4562; Apr. 5, 1906, c. 1366, § 3, 34 Stat. 100.

Historical Note

Derivation. Act July 20, 1840, c. 48, 5 Stat. 396.

Codification. The word "consul" was followed originally by the words "or

commercial agent". The grade of commercial agent was abolished by Act Apr. 5, 1906.

Notes of Decisions

1. Expense of survey

When the crew insist on a survey of the vessel, alleging that she is unseaworthy, if there be reasonable cause for

a survey, the owners cannot charge the expense to the seamen. *The William Harris*, D.C.Me.1837, Fed.Cas.No.17,695.

§ 660. Refusal to pay wages and charges

Every master who refuses to pay such wages and charges shall be liable to each person injured thereby in damages, to be recovered in any court of the United States in the district where such delinquent may reside or be found, and in addition thereto, be punishable by a fine of \$100 for each offense. R.S. § 4563.

Historical Note

Derivation. Act July 20, 1840, c. 48, 5 Stat. 397.

Cross References

Wages of seamen, see section 591 et seq. of this title.

§ 660—1. Space and accommodations for crew; hospital compartments

On all merchant vessels of the United States the construction of which shall be begun after March 4, 1915, except yachts, pilot boats, or vessels of less than one hundred tons register, every place ap-

appropriated to the crew of the vessel shall have a space of not less than one hundred and twenty cubic feet and not less than sixteen square feet, measured on the floor or deck of that place, for each seaman or apprentice lodged therein, and each seaman shall have a separate berth and not more than one berth shall be placed one above another; such place or lodging shall be securely constructed, properly lighted, drained, heated, and ventilated, properly protected from weather and sea, and, as far as practicable, properly shut off and protected from the effluvium of cargo or bilge water. And every such crew space shall be kept free from goods or stores not being the personal property of the crew occupying said place in use during the voyage.

In addition to the space allotment for lodgings provided in this section, on all merchant vessels of the United States which in the ordinary course of their trade make voyages of more than three days' duration between ports, and which carry a crew of twelve or more seamen, there shall be constructed a compartment, suitably separated from other spaces, for hospital purposes, and such compartment shall have at least one bunk for every twelve seamen, constituting her crew, provided that not more than six bunks shall be required in any case.

Every steamboat of the United States plying upon the Mississippi River or its tributaries shall furnish an appropriate place for the crew, which shall conform to the requirements of this section, so far as they are applicable thereto, by providing sleeping room in the engine room of such steamboat, properly protected from the cold, wind, and rain by means of suitable awnings or screens on either side of the guards or sides and forward, reaching from the boiler deck to the lower or main deck, under the direction and approval of the Commandant of the Coast Guard, and shall be properly heated.

All merchant vessels of the United States, the construction of which shall be begun after March 4, 1915, having more than ten men on deck must have at least one light, clean, and properly ventilated washing place. There shall be provided at least one washing outfit for every two men of the watch. The washing place shall be properly heated. A separate washing place shall be provided for the fire-room and engine-room men, if their number exceed ten, which shall be large enough to accommodate at least one-sixth of them at the same time, and have hot and cold water supply and a sufficient number of washbasins, sinks, and shower baths.

Any failure to comply with this section shall subject the owner or owners of such vessel to a penalty of not less than \$50 nor more than \$500: *Provided*, That forecastles shall be fumigated at such intervals as may be provided by regulations to be issued by the Surgeon General of the Public Health Service, with the approval of the Coast Guard, and shall have at least two exits, one of which may be used in emergencies. Mar. 3, 1897, c. 389, § 2, 29 Stat. 688; Mar. 4, 1915,

c. 153, § 6, 38 Stat. 1165; June 30, 1932, c. 314, § 501, 47 Stat. 415; May 27, 1936, c. 463, § 1, 49 Stat. 1380; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Codification. As originally enacted Act Mar. 3, 1897 read as follows:

"On and after June thirtieth, eighteen hundred and ninety-eight, every place appropriated to the crew of a seagoing vessel of the United States, except a fishing vessel, a yacht, a pilot boat, and all vessels under two hundred tons register, shall have a space of not less than seventy-two cubic feet and not less than twelve square feet measured on the deck or floor of that place for each seaman or apprentice lodged therein: Provided, That any such seagoing sailing vessel, built or rebuilt after June thirtieth, eighteen hundred and ninety-eight, shall have a space of not less than one hundred cubic feet and not less than sixteen square feet measured on the deck or floor of that space for each seaman or apprentice lodged therein. Such place shall be securely constructed, properly lighted, drained, heated and ventilated, properly protected from weather and sea, and, as far as practicable, properly shut off and protected from the effluvia of cargo or bilge water.

"Fishing vessels, yachts, and pilot boats are hereby exempted from the provisions of section one of chapter one hundred and seventy-three of the laws of eighteen hundred and ninety-five, entitled 'An Act to amend section one of chapter three hundred and ninety-eight of the laws of eighteen hundred and eighty-two, entitled 'An act to provide for deductions from the gross tonnage of vessels of the United States,' so far as said section prescribes the amount of space which shall be appropriated to the crew and provides that said space shall be kept free from goods or stores not being the personal property of the crew in use during the voyage.

"And on and after June thirtieth, eighteen hundred and ninety-eight, every steamboat of the United States plying upon the Mississippi river or its tributaries shall furnish an appropriate place for the crew, which shall conform to the requirements of this section so far as they shall be applicable thereto by providing sleeping room in the engine

room of the steamboats properly protected from the cold, winds, and rain by means of suitable awnings or screens on either side of the guards or sides and forward, reaching from the boiler deck to the lower or main deck, under the direction and approval of the Supervising Inspector-General of Steam Vessels, and shall be properly heated. Any failure to comply with this section shall subject the owner or owners to a penalty of five hundred dollars."

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 28, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1230, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

Words "Supervising Inspector General of Steam Vessels" were changed to "Director of Bureau of Navigation and Steamboat Inspection" and then to "Director of the Bureau of Marine Inspection and Navigation" by Acts June 30, 1932, and May 27, 1936. Said designation was changed to "Commandant of the Coast Guard" and "Coast Guard" was substituted for "Department of Commerce" on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Cross References

Inspection of crew quarters, see section 660a of this title.

Space and accommodations for crew of certain vessels, see section 77, par. (a), of this title.

Notes of Decisions

Generally 3

Complaint prerequisite to leaving ship

4

Construction 1

Retroactive effect 2

The requirements as to crew space on vessels, prescribed by this section, applied to all vessels constructed after the passage of the act of March 3, 1897. 1916, 30 Op. Atty. Gen. 558.

1. Construction

The Attorney General had ruled that the words "this act" referred to the act of 1897. 1916, 30 Op. Atty. Gen. 558.

2. Retroactive effect

This section applies only to vessels constructed subsequent to its enactment. *Rey v. Colonial Nav. Co.*, C.C.A.N.Y. 1941, 116 F.2d 580.

In the original text of this section the words "after the passage of this act" referred to the act of 1915, and not to the act of 1897, and the provisions were not retroactive, and did not apply to a vessel built between 1897 and 1915. *The San Juan*, C.C.A.N.Y. 1918, 250 F. 93.

3. Generally

In fireman's action based on theory that by reason of failure to provide suitable sleeping quarters for crew fireman contracted tuberculosis, in absence of proof regarding age of vessel, charge that vessel was operated in violation of this section could be disregarded. *Rey v. Colonial Nav. Co.*, C.C.A.N.Y. 1941, 116 F.2d 580.

4. Complaint prerequisite to leaving ship

Seamen were not justified in leaving their ship before the expiration of their time of service on account of a failure to make their quarters comfortable, as required by law, where they made no complaint on that ground to the captain. *The C. F. Sargent*, D.C. Wash. 1899, 95 F. 179. See, also, *The A. M. Baxter*, D.C. Wash. 1899, 93 F. 479.

§ 660a. Inspection of crew quarters—Time and extent

(a) The Coast Guard shall inspect the crew quarters of every American vessel, at least once in each month, or at such times as such vessel shall enter an American port, and shall satisfy itself that such quarters are of the size required by law or regulations issued thereunder, are properly ventilated and in a clean and sanitary condition, and are equipped with the proper plumbing and mechanical appliances required by law or regulations issued thereunder, and that such plumbing and mechanical appliances are in good working order and condition.

Withdrawal of certificate of inspection; penalty

(b) Whenever it shall be found that the crew quarters of any such vessel are not of the size required by law or regulations issued thereunder or are not properly ventilated or are not in a clean and sanitary condition or are not equipped with the proper plumbing and mechanical appliances required by law or regulations issued thereunder, or that such plumbing and mechanical appliances are not in good working order and condition, the appropriate Coast Guard official shall withdraw the certificate of inspection of such vessel and refuse to reissue the same until such improper conditions have been corrected; and the master or other licensed officer of such vessel who shall have willfully or negligently permitted such vessel to be in such improper condition shall be subject to a penalty of not more

than \$500. June 25, 1936, c. 816, § 4, 49 Stat. 1935; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer,

the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

"Coast Guard" was substituted for "local inspectors of the Bureau of Marine Inspection and Navigation" in subsec. (a) and "Coast Guard official" for "board of local inspectors" in subsec. (b) on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Cross References

Enforcement, application, separability and appropriation to carry out section, see sections 689-692 of this title.

Space and accommodations for crew, see sections 77(a) and 680-1 of this title.

Notes of Decisions

1. Certificate of inspection

In action under section 688 of this title for death of seaman, on ground that defendant negligently failed to provide seaman with proper quarters aboard defendant's vessel, thereby aggravating seaman's tubercular condition from which

he died, certificate of inspection made by Coast Guard pursuant to this section was not conclusive on issue as to condition of vessel. *Murphy v. Overlakes Freight Corp.*, C.A.N.Y. 1949, 177 F.2d 342, certiorari denied 70 S.Ct. 573, 339 U.S. 913, 94 L.Ed. 1339.

§ 660b. Same; exception as to unrigged vessels

The provisions of section 660a of this title shall not apply to unrigged vessels except seagoing barges. June 16, 1938, c. 467, § 2, 52 Stat. 754.

Cross References

Definitions of "unrigged vessel", and "seagoing barge", see section 672c of this title.

§ 661. Neglect to provide sufficient stores

Should any master or owner of any merchant vessel of the United States neglect to provide a sufficient quantity of stores to last for a voyage of ordinary duration to the port of destination, and in consequence of such neglect the crew are compelled to accept a reduced scale, such master or owner shall be liable to a penalty as provided in section 665 of this title. R.S. § 4564; Dec. 21, 1898, c. 28, § 12, 30 Stat. 758.

Historical Note

Derivation. Act July 20, 1790, c. 29, § 9, 1 Stat. 135.

Codification. R.S. § 4564, read: "Every vessel belonging to a citizen of the United States, bound on a voyage across the Atlantic Ocean, shall, at the time of leaving the last port from whence she sails, have on board, well secured under deck, at least sixty gallons of water, one hundred pounds of salted flesh meat, and one hundred pounds of wholesome

ship-bread, for every person on board such vessel, besides such other provisions, stores, and live-stock as shall by the master or passengers be put on board, and in like proportion for shorter or longer voyages."

Act Dec. 21, 1898, amended R.S. § 4564 to read as above set forth. Section 28 of said Act Dec. 21, 1898 provided that it should apply to all vessels not specifically exempted by it.

Notes of Decisions

Contract, obligations under 1
 Deficiency, cause of 2
 Duty and liability generally 3
 Foreign ports, seamen at 4
 Leaving ship as justified 5
 Persons liable 6
 Supplies obtained by seamen 7

1. Contract, obligations under

The owner is bound by his contract to furnish the seamen suitable subsistence and what is suitable depends upon what is usual in similar voyages. *Foster v. Sampson*, D.C.Mass.1849, Fed.Cas.No.4,982.

2. Deficiency, cause of

Where a detention on a whaling voyage is caused by stress of weather, whereby the crew suffer greatly from the rigor of the climate and scarcity of provisions, owners of the vessel are not bound to pay extra wages during such detention, or for the scarcity of provisions if an ample supply was taken at the beginning of the voyage; the scarcity being occasioned by sharing with another crew in distress. *Burdett v. Williams*, D.C.Conn.1886, 27 F. 113.

An accidental or unintentional deficiency in the allowance to the crew will not subject the master or owner to the penalty. *The Elizabeth v. Rickers*, C.C.N.Y.1831, Fed.Cas.No.4,353.

3. Duty and liability generally

Every master, when sailing to or from a foreign port, is bound to see before he sets sail that his vessel is properly provisioned, including a surplus to meet all reasonable contingencies of the seas, and if, in consequence of an omission to do so, there is a short allowance, the withholding of suitable food is not justifiable. *U. S. v. Reed*, C.C.N.Y.1897, 86 F. 308.

If, during a voyage, a master meets with difficulty at sea, it is his duty, before changing his voyage for a much longer one, to exercise exactly the same care as when first setting sail, to see that he is properly provisioned for the change of course, and to provision his vessel by any practicable methods the circumstances reasonably admit. *Id.*

Whether the master's failure to properly provision his ship is from negligence or inadvertence is immaterial and failure to furnish the crew with the scheduled allowance is actionable unless provisions, the allowance of which has been reduced, could not be procured in sufficient quantities, or were unavoidably lost or injured, and proper and equivalent substitutes were supplied in lieu thereof, in a reasonable time. *Petersen v. J. F. Cunningham Co.*, D.C.Cal.1896, 77 F. 211.

The usual length of a voyage by sailing vessel being 45 days, delay, by reason of bad weather or accident, prolonging it to 59 days, does not justify the master in shortening the schedule allowance of provisions of the crew. *Id.*

The master of a vessel—particularly of a sailing vessel traveling to localities and ports not much frequented by vessels and traders—must not only be adequately supplied with provisions for his crew to last the ordinary voyage, but he is under the duty of preparing reasonably, to some extent, for the exigencies and necessities of a longer voyage than is expected or is usual. *Id.*

4. Foreign ports, seamen at

A seaman engaged at a foreign port on the homeward voyage has the same rights as to wages and food allowance as one shipping at the point of original departure. *Gardner v. The New Jersey*, D.C.Pa.1806, Fed.Cas.No.5,233.

5. Leaving ship as justified

Under both British and American law, seamen who are supplied with insufficient food are justified in leaving the ship before completion of the voyage for which they signed, and are entitled to recover full wages for the time served. *The City of Norwich*, C.C.A.N.Y.1922, 279 F. 687.

6. Persons liable

Neglect to furnish suitable food is chargeable to owner's agent, as well as owner, and makes both ship and owner liable. U. S. Shipping Board Emergency

Fleet Corporation v. Greenwald, C.C.A. N.Y.1927, 16 F.2d 948.

7. Supplies obtained by seamen

Seamen compelled to supply themselves with board have a lien against the vessel for the expenses thereof. *Brown v. The Alexander McNeill*, D.C.Ga.1874, Fed. Cas. No.1,988.

Mariners who properly remain by their vessel may recover the amount paid for necessary subsistence not furnished by the master. *The Gazelle*, D.C.Mass. 1858, Fed.Cas.No.5,289.

§ 662. Complaint as to provisions or water; examination

Any three or more of the crew of any merchant vessel of the United States bound from a port in the United States to any foreign port, or being of the burden of seventy-five tons or upward, and bound from a port on the Atlantic to a port on the Pacific, or vice versa, may complain to any officer in command of any of the vessels of the United States Navy, or consular officer of the United States, or Coast Guard official to whom the duties of shipping commissioner have been delegated, or chief officer of the customs, that the provisions or water for the use of the crew are, at any time, of bad quality, unfit for use, or deficient in quantity. Such officer shall thereupon examine the provisions or water, or cause them to be examined; and if, on examination, such provisions or water are found to be of bad quality and unfit for use, or to be deficient in quantity, the person making such examination shall certify the same in writing to the master of the ship. If such master does not thereupon provide other proper provisions or water, where the same can be had, in lieu of any so certified to be of a bad quality and unfit for use, or does not procure the requisite quantity of any so certified to be insufficient in quantity, or uses any provisions or water which have been so certified as aforesaid to be of bad quality and unfit for use, he shall, in every such case, be liable to a penalty of not more than \$100; and upon every such examination the officers making or directing the same shall enter a statement of the result of the examination in the log book, and shall send a report thereof to the district judge for the judicial district embracing the port to which such vessel is bound; and such report shall be received in evidence in any legal proceedings. R.S. § 4565; 1946 Reorg.Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Derivation. Act June 7, 1872, c. 322, § 36, 17 Stat. 289.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agen-

cies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any

of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 28, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the

Navy under sections 1 and 3 of Title 14, Coast Guard.

Reference to "shipping commissioner" was changed to "Coast Guard official to whom the duties of shipping commissioner have been delegated" on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Cross References

Application of this section to sail or steam vessels engaged in coastwise trade, see section 544 of this title.

Withholding food and nourishment from crew, penalty, see section 2191 of Title 18, Crimes and Criminal Procedure.

Notes of Decisions

Time of complaint 2
Voyages under section 1

provisions of this section and section 666 of this title. The Hazel Kirke, D.C. and C.C.N.Y. 1885, 25 F. 601.

1. Voyages under section

A steamboat engaged in connection with a railroad to transport passengers on Jamaica Bay, an inlet of the Atlantic Ocean on Long Island, is engaged in interstate commerce and subject to the

2. Time of complaint

Complaint by crew members of quantity and quality of food should be made during voyage. The Rosemary, D.C. Va. 1925, 9 F.2d 980, affirmed 9 F.2d 982, certiorari denied 48 S.Ct. 484, 271 U.S. 670, 70 L.Ed. 1143.

§ 663. Forfeiture for false complaint as to provisions or water

If the officer to whom any such complaint in regard to the provisions or the water is made certifies in such statement that there was no reasonable ground for such complaint, each of the parties so complaining shall forfeit to the master or owner his share of the expense, if any, of the survey. This section shall not apply to fishing or whaling vessels or yachts. R.S. § 4566; Dec. 21, 1898, c. 28, §§ 13, 26, 30 Stat. 758, 764.

Historical Note

Derivation. Act June 7, 1872, c. 322, § 37, 17 Stat. 289.

Codification. R.S. § 4566, provided for a forfeiture of a sum not exceeding one week's wages.

Act Dec. 21, 1898, amended this section to read as above set forth.

Exception. Application of and exceptions to Act Dec. 21, 1898, see note under section 569 of this title.

§ 664. Permission from master to enter complaint as to provisions or water

If any seamen, while on board any vessel, shall state to the master that they desire to make complaint, in accordance with sections 662 and 663 of this title in regard to the provisions or the water, to a competent officer, against the master, the master shall, if the vessel is then at a place where there is any such officer, so soon as the service of the vessel will permit, and if the vessel is not then at such a place, so soon after her first arrival at such place as the service of the vessel will permit, allow such seamen, or any of them, to go ashore, or shall send them ashore, in proper custody, so that they may be enabled to make such complaint; and shall, in default, be liable to a penalty of not more than \$100. R.S. § 4567.

Historical Note

Derivation. Act June 7, 1872, c. 322, § 38, 17 Stat. 269.

Cross References

Application of section to sail or steam vessels engaged in coastwise trade, see section 544 of this title.

§ 665. Allowance for reduction of provisions

If, during a voyage, the allowance of any of the provisions which any seaman is entitled to under section 713 of this title is reduced except for any time during which such seaman willfully and without sufficient cause refuses or neglects to perform his duty, or is lawfully under confinement for misconduct either on board or on shore; or if it shall be shown that any of such provisions are, or have been during the voyage, bad in quality or unfit for use, the seaman shall receive, by way of compensation for such reduction or bad quality, according to the time of its continuance, the following sums, to be paid to him in addition to and to be recoverable as wages:

First. If his allowance is reduced by any quantity not exceeding one-third of the quantity specified by law, a sum not exceeding 50 cents a day.

Second. If his allowance is reduced by more than one-third of such quantity, a sum not exceeding \$1 a day.

Third. In respect of bad quality, a sum not exceeding \$1 a day.

But if it is shown to the satisfaction of the court before which the case is tried that any provisions, the allowance of which has been reduced, could not be procured or supplied in sufficient quantities, or were unavoidably injured or lost, or if by reason of its innate qualities any article becomes unfit for use and that proper and equivalent substitutes were supplied in lieu thereof, the court shall take such circumstances into consideration and shall modify or refuse compensation, as the justice of the case may require. This section

Note 1

shall not apply to fishing or whaling vessels or yachts. R.S. § 4568; Dec. 21, 1898, c. 28, §§ 14, 26, 30 Stat. 758, 764.

Historical Note

Derivation. Act June 7, 1872, c. 322, § 39, 17 Stat. 270.

Codification. Prior to the amendment, the first part of R.S. § 4568 read as follows: "If, during a voyage, the allowance of any of the provisions which any seaman has, by his agreement, stipulated for, is reduced, except in accordance with any regulations for reduction by way of punishment, contained in the agreement, and also for any time during which such seaman willfully, and without sufficient cause, etc."

Act Dec. 21, 1898, amended this section generally and among other changes substituted "or" for "and" after "bad in quality" in the introductory paragraph, and "by law" for "in the agreement" in the paragraph numbered "first," inserted the words "or if by reason of its innate qualities any article becomes unfit for use" in the last paragraph, and omitted the words "in a reasonable time" after "in lieu thereof" in the same paragraph.

Exception. Application of and exceptions to Act Dec. 21, 1898, see note under section 569 of this title.

Cross References

Withholding food and nourishment from crew, penalty, see section 2191 of Title 18, Crimes and Criminal Procedure.

Notes of Decisions

Actions	3-8
Generally	3
Burden of proof	4
Costs	5
Evidence	6
Joinder and consolidation	7
Pleading	8
Amount of extra pay	9, 10
Interest	10
Bread, short allowance of	11
Construction	1, 2
With other sections	2
Defenses	12
Foreign vessels, seamen on	13
Mutiny and disobedience, effect	14
Seamen	15
Shortage	16-19
Cause or reason	17
Determination	18
Penalty or allowance, generally	18
Prior law	19
Substitutes, proper and equivalent	20

alty for violations thereof, are remedial in nature and should be liberally construed, so as to give their humane purpose full and practical effect, and cause them to be respected by shipowners and masters. *The H. E. Thompson v. Martin*, 1900, 16 App.D.C. 222.

2. — With other sections

The penalty provided for in this section cannot be made applicable by implication to section 666 of this title; this section relates exclusively to the failure of the master or owners to supply the crew with the provisions stipulated for in the shipping articles, while section 666 relates only to the failure of the master to serve the crew with antiscorbutics, and the failure to have on board a medicine chest, medical stores, lime juice, etc. *Petersen v. J. F. Cunningham Co.*, D.C.Cal.1896, 77 F. 211.

3. Actions—Generally

A release signed by seamen at the end of a voyage applied to wages only, and did not debar them from the right to maintain an action for short allowance or bad quality of provisions. *Billings v. Bausbeck*, Cal.1912, 200 F. 523, 119 C.C.A. 21.

Provisions furnished crew of a vessel must be in sufficient amount and of suitable quality, but owner of vessel is not liable for bad cooking where good

1. Construction

This section is clearly mandatory and is designed to secure for each seaman a timely and suitable quantity, quality and variety of food for the service for which he has been employed. *Nelson v. Patsel*, Cal.1916, 232 F. 682, 146 C.C.A. 608.

Section 713 of this title, Table A, fixing a scale of provisions to be served to crews of American vessels during a voyage, and this section, prescribing a pen-

food is provided. *Cadle v. U. S.*, D.C. Cal.1946, 65 F.Supp. 288.

Where a ship has full supply of provisions, and the crew is insufficiently furnished, their remedy is an action for damages. *The Child Harold*, D.C.N.Y. 1846, Fed.Cas.No.2,676.

4. — Burden of proof

In seaman's suit for damages and maintenance for illness alleged to have been caused by eating spoiled food on ship, the master or owner of the ship is not required to prove more than that proper provisions were furnished. *Miller v. Lykes Bros.-Ripley S. S. Co.*, C.C.A.La. 1938, 98 F.2d 185, certiorari denied 59 S.Ct. 150, 305 U.S. 641, 83 L.Ed. 413.

In seaman's suit against shipowner for damages and maintenance predicated on chronic ailment which was alleged to have resulted from seaman's eating spoiled food while member of crew of the ship, owner did not have burden to show that spoiled meat, admittedly found among ship's stores did not cause the illness of the seaman as well as to show that food served on the voyage was not bad. *Id.*

In seaman's suit against shipowner for damages and maintenance for illness resulting from eating spoiled food while member of crew of ship, the owner or master of the ship must show that the ship was properly provisioned. *Id.*

The burden is on the owner of a vessel to show that it was properly provisioned. *The Silver Shell*, D.C.N.Y.1918, 255 F. 340. See, also, *The Elizabeth Frith*, D.C.N.Y. 1831, Fed.Cas.No.4,361.

In a suit by seamen for failure of the owner to provision the ship in accordance with the shipping articles and the applicable sections of this title, the owner has the burden of proof. *The Emma F. Angell*, D.C.Pa.1914, 217 F. 311.

Where there has been long delay in bringing suit for a short allowance, the burden will be put upon libellant of showing that the ship went to sea unprovided with a sufficient supply. *Piehl v. Balchen*, D.C.N.Y.1844, Fed.Cas.No.11,137.

5. — Costs

Where one of the libellants unites a demand for contract wages unpaid him with his claim for short allowance, and obtains a decree for those wages, the court will only allow him proportionate costs against the vessel on that demand, not including witness fees to his colibellants, and will order full costs against

him in connection with his colibellants upon the other branch of the litigation. *The Bark Child Harold*, D.C.N.Y.1846, Olc.Adm. 275, Fed.Cas.No.2,676.

If the libellants fail in maintaining their action, and it appears there was no colorable cause for bringing it, they will be charged with full costs of suit. *Id.*

6. — Evidence

In seaman's suit for damages and maintenance for illness alleged to have resulted from eating spoiled food on ship, ordinary rules of evidence apply on issue of causation. *Miller v. Lykes Bros.-Ripley S. S. Co.*, C.C.A.La.1938, 98 F.2d 185, certiorari denied 59 S.Ct. 150, 305 U.S. 641, 83 L.Ed. 413.

In seaman's suit in admiralty for damages and maintenance for illness alleged to have resulted from eating spoiled food on ship, proof to sustain recovery must be more than mere speculation or conjecture. *Id.*

In seaman's suit for damages and maintenance evidence justified decree denying seaman recovery against owner of ship for damages and maintenance for chronic polycythemia which was alleged to have resulted from eating spoiled food while seaman was member of crew of ship on ground that ingestion of spoiled meat did not produce or in any way contribute to seaman's condition and that illness had its inception prior to beginning of voyage of ship in question. *Id.*

On a libel by seamen who claimed one dollar per day for a period of 75 days because of the failure of the ship to provide food fit to eat and in sufficient quantities, evidence was insufficient to show that the vessel was at fault. *The Silver Shell*, D.C.N.Y.1918, 255 F. 340.

Findings by a district court that seamen on a voyage were not furnished with food of the kind, quality, or quantity required by section 713 of this title, were sustained by the evidence. *Billings v. Bausback*, Cal.1912, 200 F. 523, 119 C.C.A. 21.

In an action by seamen to recover damages for short allowance of food and scurvy arising therefrom, the evidence of the seamen was not conclusive, and opposed thereto was evidence of the master and of the store book showing that on the trip from Shanghai to New York via Manila, there was consumed the same amount of beef and pork as on the trip from New York to Shanghai, which was 27 days longer than the former trip, but the seamen testified that on the latter

Note 6

trip there was a sufficient supply of meat; the officers of the ship testified that no restriction was placed on the amount of pork or beef to be furnished the crew and that there remained at the end of the voyage, unconsumed, an abundant supply for more than 30 days; and claims for damages were not established by the evidence. *The Pactolas*, D.C.N.Y. 1898, 88 F. 299.

Where there is evidence that every one of a crew was afflicted with scurvy, of which several died, and that the ordinary cause of that disease is lack of suitable food, the jury are justified, unless some other cause is shown, in finding that there was such lack of suitable food. *U. S. v. Reed*, C.C.N.Y. 1897, 86 F. 308.

In a libel by seamen to recover compensation for a violation of this section and section 713 of this title, fixing a scale of provisions to be served to American seamen during a voyage, proof of a substantial failure by the master to observe the requirements of the law, with such reasonable particularity as to the number of days on which the scale was not observed as will enable the court to assess the compensation with reasonable certainty, is sufficient, without showing a failure from day to day to observe the scale, especially where it appears that during the voyage the master and owner knew, while the seamen were ignorant of, the new scale, for the violation of which the latter subsequently libel the vessel. *The H. E. Thompson v. Martin*, 1900, 16 App.D.C. 222.

7. — Joinder and consolidation

Several libels for wages and for allowance for reduction of provisions may be consolidated. *The Sarah E. Kennedy*, D.C.N.J. 1885, 25 F. 672.

All the crew may unite in a suit for double wages because of a short allowance of bread. *The Child Harold*, D.C.N.Y. 1846, Fed.Cas.No.2,676.

8. — Pleading

Compensation for short allowance is recovered as wages, and a general form of pleading is sufficient to admit evidence of the right, where not excepted to before trial. *Piehl v. Balchen*, D.C.N.Y. 1844, Fed.Cas.No.11,137.

The answer to a libel for extra wages for short allowance is insufficient if it fails to set forth that the vessel shipped the provisions required by law. *The Elizabeth Frith*, D.C.N.Y. 1831, Fed.Cas. No.4,361.

9. Amount of extra pay

A seaman on a ship on which spoiled meat was admittedly found among ship's stores was not entitled to recover \$1 per day for each day of the voyage on which tainted meat was served under section 713 of this title but notwithstanding agreement so to do may demand scale of provisions set out in section 713 of this title where record was silent as to any agreement with reference to rations and no proof of any demand was made. *Miller v. Lykes Bros.-Ripley S. S. Co.*, C.C.A.La. 1938, 98 F.2d 185, certiorari denied 59 S.Ct. 150, 305 U.S. 641, 83 L.Ed. 413.

Where the crew had the full navy ration of meat, and a short allowance of bread and of other articles, like beans, rice, etc., they were entitled to but one day's extra pay for each day's short allowance. *The Hermon*, D.C.Mass. 1870, 1 Lowell 515, 12 Fed.Cas.No.6,411.

One-third additional wages was sufficient compensation where there was a deficiency in but one of the specified articles. *Coleman v. The Harriet*, D.C.S.C. 1796, Fed.Cas.No.2,982.

10. — Interest

Interest, as a general rule, will be allowed from the time the wages were due until a tender or payment under the decree, but no interest is allowable upon extra wages for short allowance. *The Elizabeth Frith*, D.C.N.Y. 1831, Fed.Cas. No.4,361.

11. Bread, short allowance of

Five pounds a week is a short allowance of bread. *The Mary Paulina*, D.C.Mass. 1843, Fed.Cas.No.9,224.

12. Defenses

A shipowner can only be relieved from liability for failure to furnish to seamen provisions in accordance with the scale contained in section 713 of this title on some one of the grounds specified in this section. *Nelson v. Patsel*, Cal. 1916, 232 F. 682; 146 C.C.A. 608.

13. Foreign vessels, seamen on

Seamen on Swedish bark were entitled to one month's extra pay for injuries sustained due to inadequate food and provisions. *The Amalia*, D.C.Me. 1880, 3 F. 652.

14. Mutiny and disobedience, effect

Seamen may recover wages and claims for short allowance, although guilty of mutinous and disobedient conduct, where they had afterwards returned to duty and been criminally prosecuted for

the offense. *Hill v. The Triumph*, D.C. N.Y.1841, Fed.Cas.No.6,500.

15. Seamen

Members of crew of vessel, who worked under contract, providing that they were not guaranteed salaries or disbursements for their time and labor, and under which their compensation was to be specified percentage of proceeds from fish caught on fishing trip for which they signed, were not merchant "seamen" entitled to recover penalties imposed by this section providing penalties for reduction of allowance of provisions to which seaman is entitled. *Sigurjonsson v. Trans-American Traders*, C. A.Fla.1951, 188 F.2d 760, certiorari denied 72 S.Ct. 46, 342 U.S. 831, 96 L.Ed. 629, rehearing denied 72 S.Ct. 105, 342 U.S. 874, 96 L.Ed. 657.

16. Shortage—Determination

The provision of this section that, if the allowance of any of the provisions to which any seaman is entitled is reduced, etc., applies to a shortage in any separate article of food specified, and not to a reduction of less or more than one-third of the entire quantity. *The Edward R. West*, D.C.Wash.1914, 212 F. 287. See, also, *Nelson v. Patsel*, Cal.1916, 232 F. 682, 146 C.C.A. 608.

17. Cause or reason

Where a sailing vessel, starting from Hong Kong for New York by the Cape of Good Hope, was driven by bad weather several hundred miles eastward, and the master changed his route by way of Cape Horn, 5,000 to 7,000 miles further, for which route the supplies were plainly insufficient, consequent suffering of the crew from scurvy, etc., must be compensated in damages, the master having failed to stop at Honolulu, Chili, or Rio de Janeiro for additional supplies, as he might easily have done. *Robinson v. The T. F. Oakes*, D.C.N.Y.1897, 82 F. 759.

Where the voyage is prolonged beyond all reasonable expectation the master will be justified, when no additional supplies can be procured, in reducing the allowance of food. *Petersen v. J. F. Cunningham Co.*, D.C.Cal.1896, 77 F. 211. See, also, *Ferrara v. The Barque Talent*, D.C.Pa.1838, *Crabbe* 216, 8 Fed.Cas.No. 4,745.

Whether the failure arose through negligence or inadvertence is immaterial so far as the recovery of the penalty provided for by the section is concerned and the mere failure to furnish the crew with the scheduled allowance is

actionable, and a recovery may be had unless it can be shown to the satisfaction of the court that any provisions the allowance of which had been reduced could not be procured or supplied in sufficient quantities or were unavoidably lost or injured, and that proper and equivalent substitutes were supplied in lieu thereof in a reasonable time, in which event the court may modify or refuse compensation as the justice of the case may require. *Petersen v. J. F. Cunningham Co.*, D.C.Cal.1896, 77 F. 211.

Where a detention occurred from stress of weather and not from design, wilfulness, or negligence, and where a short allowance of provisions was due to the delivery of a part of the provisions to a crew in distress, an ample supply of provision having been taken at the beginning of the voyage, the owners are not bound to pay extra wages for such short allowance. *Burdett v. Williams*, D.C.Conn.1886, 27 F. 113.

Extra wages are allowed for a short allowance of bread, where an insufficient quantity was provided, though the immediate cause of the deficiency was the spoiling of part of it by a sea peril. *The Hermon*, D.C.Mass.1870, Fed.Cas.No. 6,411.

In order to subject the master or owner of the vessel to the payment of extra wages for short allowance, some order or command to that effect must have been given or there must have been some gross negligence in the master; an accidental or unintentional deficiency would not subject him to the penalty. *The Ship Elizabeth v. Rickers*, D.C.N.Y. 1831, 2 Paine 291, Fed.Cas.No.4,353.

18. — Penalty or allowance, generally

A provision in shipping articles that the crew are to be furnished provisions in accordance with section 713 of this title was valid and enforceable, and for a violation thereof the seamen are entitled to recover under this section. *Nelson v. Patsel*, Cal.1916, 232 F. 682, 146 C. C.A. 608.

Seamen were entitled to an allowance for shortage of provisions furnished on a voyage from Callao, Peru, to Grays Harbor, below the quantities specified in this section. *The Edward R. West*, D.C.Wash.1914, 212 F. 287.

Where the master had a "method" of his own as to the allowance of provisions for the crew and on objection by the crew and a request for the statutory scale of allowances, the master agreed to comply therewith, but after a few days

Note 18

the crew asked for a return to the master's "method," which the latter agreed to if the crew would be "satisfied in the future and make no more complaints," which agreement was entered in the log book, this latter contract was one-sided, without consideration, and invalid, and would not prevent recovery of the extra wages on account of a reduction in the allowances provided by law. *Broux v. The Ivy*, D.C.Del.1894, 62 F. 600.

When the crew is put on short allowance without necessity, in a case not within the statute, there is a wrong in breach of contract, and a remedy will be given by a court of admiralty in the form of additional wages. *The John L. Dimmick*, D.C.Me.1858, 3 Ware 196, Fed. Cas.No.7,355. See, also, *The Hermon*, D.C.Mass.1870, 1 Lowell 515, Fed.Cas.No. 6,411; *Collins v. Wheeler*, D.C.Mass.1850, 1 Sprague 188, Fed.Cas.No.3,018.

Where a ship was lying in the Bay of Mobile four months waiting for cargo, and the usual supply of provisions from the ship's store was withheld, the crew being required to furnish themselves by taking oysters from the oyster-beds when the state of the weather permitted it to be done, and the supply being sufficient in quantity, they were entitled to additional wages. *The John L. Dimmick*, D.C.Me.1858, 3 Ware, 196, Fed.Cas. No.7,355.

Under section 661 of this title, the claim for additional wages was not founded on the mere fact that the crew was put on short allowance, but on the neglect or omission of the master to take on board the quantity and species of provisions required by that section and the two circumstances of deficiency in the quantity or quality of the provisions, and a short allowance, must have concurred in order to entitle the crew to the remedy provided by the section. *Ferrara v. The Barque Talent*, D.C.Pa. 1838, Crabbe 216, Fed.Cas.No.4,745. See, also, *Piehl v. Balchen*, D.C.N.Y.1844, Olc. Adm. 24, Fed.Cas.No.14,137; *The John L. Dimmick*, D.C.Me.1858, 3 Ware 196, Fed. Cas.No.7,355; *The Elizabeth Frith*, D.C. N.Y.1831, 1 Blatchf. & H. Adm. 195, Fed. Cas.No.4,361; *The Ship Elizabeth v. Rickers*, D.C.N.Y.1831, 2 Paine 291, Fed.Cas. No.4,353; *The Bark Child Harold*, D.C. N.Y.1846, Olc. Adm. 275, Fed.Cas.No.2,676.

A mate who had supplies on board, which were used for the necessary support of himself and crew, was allowed to recover the amount used by himself as enhanced wages, and the balance out of the surplus in court. *The Rodney*, D. C.N.Y.1831, Fed.Cas.No.11,993.

19. — Prior law

The recovery of such penalty did not necessarily preclude the seaman from recovering damages, also, for a deficiency of other provisions. *Collins v. Wheeler*, D.C.Mass.1850, Fed.Cas.No.3,018. See, also, *Foster v. Sampson*, D.C.Mass.1849, Fed.Cas.No.4,982.

If, under section 661 of this title as enacted originally, less than the quantity of all three articles (water, meat, and bread) was provided, and there was a short allowance of all, triple wages were given for each day. *Collins v. Wheeler*, D.C.Mass.1850, Fed.Cas.No.3,018.

Double wages were given under section 661 of this title as enacted originally, if there was a shortage in any one of the three articles named therein. *The Mary*, D.C.Me.1838, Fed.Cas.No.9,191. See, also, *The Mary Paulina*, D.C.Mass. 1843, Fed.Cas.No.9,224.

20. Substitutes, proper and equivalent

Under this section and section 713 of this title, the owner of a vessel is not liable for poor cooking, where good food was provided, or for the substitution of wholesome equivalents for provisions which could not be obtained in foreign ports. *The Silver Shell*, D.C.N.Y.1918, 255 F. 340.

A surplus of meat or other provisions will not make up for a want of bread. *Petersen v. J. F. Cunningham Co.*, D.C. Cal.1896, 77 F. 211. See, also, *Broux v. The Ivy*, D.C.Del.1894, 62 F. 600; *The Mary Paulina*, D.C.Mass.1843, 1 Sprague 45, Fed.Cas.No.9,224; *The Hermon*, D.C. Mass.1870, 1 Lowell 515, 12 Fed.Cas.No. 6,411.

A bread or pastry composed of one-third flour and two-thirds copra (dried cocoanut) is not a proper and equivalent substitute for ship bread. *Petersen v. J. F. Cunningham Co.*, D.C.Cal.1896, 77 F. 211.

Under section 661 of this title as enacted originally, it seems that flour cooked into good bread by the ship's cook and served out in that form might be a substitute for ship bread, though flour served out to the men would not be. *The Hermon*, D.C.Mass.1870, 1 Lowell 515, Fed.Cas.No.6,411.

Where a vessel sails without the quantity of bread under section 713 of this title, and the crew are put upon a short allowance of bread, it is no defense to their claim for double wages that flour was furnished as a substitute. *Foster v. Sampson*, D.C.Mass.1849, Fed.Cas.No. 4,982.

If the master is unable to obtain the kind of provisions required by this section, other kinds may be substituted. *The Mary*, D.C.Me.1838, Fed.Cas.No.9,191.

§ 666. Medicines

Every vessel belonging to a citizen of the United States, bound from a port in the United States to any foreign port, or being of the burden of seventy-five tons or upward, and bound from a port on the Atlantic to a port on the Pacific, or vice versa, shall be provided with a chest of medicines; and every sailing vessel bound on a voyage across the Atlantic or Pacific Ocean, or around Cape Horn, or the Cape of Good Hope, or engaged in the whale or other fisheries, or in sealing, shall also be provided with, and cause to be kept, a sufficient quantity of lime or lemon juice, and also sugar and vinegar, or other antiscorbutics, to be served out to every seaman as follows: The master of every such vessel shall serve the lime or lemon juice, and sugar and vinegar, to the crew, within ten days after salt provisions mainly have been served out to the crew, and so long afterward as such consumption of salt provisions continues; the lime or lemon juice and sugar daily at the rate of half an ounce each per day; and the vinegar weekly, at the rate of half a pint per week for each member of the crew. R.S. § 4569.

Historical Note

Derivation. Act June 7, 1872, c. 322, § 40, 17 Stat. 270.

Shipowners' Liability (Sick and Injured Seamen) Convention, 1936. Ship-

owners' Liability (Sick and Injured Seamen) Convention, 1936 duty of shipowners, see 54 Stat. Pt. 2, 1693.

Cross References

Application of this section to sail or steam vessels engaged in coastwise trade, see section 544 of this title.

Hospital compartments, see section 660—1 of this title.

Maintenance and cure in actions arising under Jones Act, see section 688 of this title.

Slop chests, see section 670 of this title.

Notes of Decisions

I. MEDICINES AND MEDICAL TREATMENT 1-40

II. MAINTENANCE AND CURE UNDER GENERAL MARITIME LAW 41-151

Abatement 98

Absence without leave, termination of liability 73

Adequacy of amount 139

Admissibility of evidence 120

Alternative or cumulative remedies 46

Amount of award

Generally 138

Adequacy 139

Excessiveness 140

Particular cases 141

Particular cases; daily rate 142

Ancient maritime laws 43

Antiscorbutics 2

Apportionment 146

Assumption of risk 99

Award, determination of 132-142

Adequacy of amount 139

Amount generally 138

Credits 133

Excessiveness of amount 140

Expenses incurred 134

Living costs 135

Nursing services 136

Award, determination of—Cont'd

Particular amounts awarded 141
 Particular amounts awarded; daily rate 142
 Transportation expenses 137
 Burden of proof 118, 119
 Release or settlement 119
 Causation 60
 Certainty, termination of liability 75
 Chest of medicine 3, 4
 Expenses for use 4
 Commencement of liability 69
 Compensation 55
 Continuation of need, termination of liability 77
 Contract or tort 57
 Contractual right 54
 Contributory negligence 100
 Convalescence, termination of liability 86
 Credits 133
 Cumulative remedies 44
 Cure, definition 49
 Definition
 Cure 49
 Maintenance 48
 Demand 97
 Discharge from
 Employment, termination of liability 85
 Hospital or treatment, termination of liability 84
 Discharge of obligation 101
 Disclosure of health, failure to make 102-104
 Physical examination 103
 Specific impairments of health 104
 Discretion of court 93
 Dismissal 94
 Duty generally 5
 Estoppel 105
 Evidence
 Admissibility 120
 Liability established 129
 Liability not established 131
 Weight and sufficiency generally 121
 Excessiveness of amount 140
 Expenses for use of chest of medicine 4
 Expenses incurred, element of award 134
 Extraordinary treatment 11
 Fact questions 122
 Federal laws 44
 Fellow servant rule 106
 Foreseeable period, termination of liability 76
 Gross negligence 110
 Historical 41-44
 Ancient maritime laws 43
 Federal laws 44
 Liability Convention 43
 Independent contractor, employee of 51
 Instructions 125
 Insurer 56
 Interest 143
 Intermediate port, stopping for treatment 7
 Intoxication 111

Joinder of causes 95

Judicial notice 117
 Jurisdiction and venue 90
 Jury
 Questions for 124
 Trial by 123
 Laches 108
 Law or admiralty as remedy 45
 Law or fact questions 122
 Liability Convention 43
 Liability established 128, 129
 Evidence 129
 Liability for treatment generally 8
 Liability not established 130, 131
 Evidence 131
 Lien 149
 Limitations 107
 Living costs 135
 Maintenance and cure under General Maritime Law 41-151
 Maximum degree of improvement, termination of liability
 Generally 82
 Particular ailments 83
 Medicines and medical treatment 1-40
 Medieval rule, termination of liability 72
 Misconduct 109-113
 Generally 109
 Gross negligence 110
 Intoxication 111
 Particular cases 113
 Venereal diseases 112
 Mitigation of damages 145
 Negligence 58
 Relation to section 683 59
 New trial 147
 Notice 96
 Nursing services, award, determination of 136
 Off duty periods, termination of liability 74
 Offer and refusal of treatment 8
 Ordinary or extraordinary treatment 11
 Part time work, termination of liability 88
 Persons
 Entitled to sue 67
 Liable 68
 Physical examination, nondisclosure of health as affected by 103
 Place injury occurred, negligence 61
 Private treatment 9
 Professional care 10
 Purpose 1
 Questions
 Jury 124
 Law or fact 122
 Reasonable time, termination of liability 73
 Reemployment, termination of liability 87
 Refusal of treatment 8
 Release or settlement 114
 Burden of proof 119
 Rem, proceeding in 91
 Remand 151

Remedy

Alternative or cumulative 46

Law or admiralty 45

Res judicata 148

Review 150

Rules governing 52-61

Generally 52

Causation 60

Compensation 55

Contract or tort 57

Contractual right 54

Insurer 56

Negligence 58

Negligence and relation to section
688 59

Place injury occurred 61

Status, predication upon 53

Seaman 50

Service of ship, employee in 62-65

Shore duties 63

Shore leave 64

Vacation 65

Set-off 115

Settlement 114

Burden of proof 119

Shore

Duties 63

Leave 64

Specific impairments of health, nondis-
closure of 104

Status, predication upon 53

Subsequent proceedings 92

Summary judgment 127

Suspension of liability 70

Termination of liability 71-89

Absence without leave 73

Certainty 75

Continuation of need 77

Convalescence 86

Discharge from employment 85

Discharge from hospital or treat-
ment 84

Foreseeable period 76

Maximum degree of improvement
generally 82

Medieval rule 72

Termination of Liability—Cont'd

Off duty periods 74

Part time work 88

Particular ailments, maximum degree
of improvement 83

Particular cases 89

Reasonable time 78

Reemployment 87

Voyage, after termination of 80

Voyage, continuation of 79

Voyage, reasonable time after termi-
nation of 81

Termination of voyage 66

Transportation expenses, element of
award 137**Treatment 6-13**

Intermediate port 7

Liability generally 6

Offer and refusal 8

Ordinary or extraordinary treatment
11Particular disabilities and circum-
stances 13

Private treatment 9

Professional care 10

Work, performance 12

Trial by jury 123

Vacation 65

Venereal diseases 113

Venue 90

Verdict 126

Voyage

Liability after termination of 80

Liability during continuation of 79

Liability reasonable time after termi-
nation of 81

Termination of 66

Wages 144

Waiver 116

Weight and sufficiency of evidence

Generally 121

Liability established 129

Liability not established 131

Withholding medicine 14

Work, performance 12

Workmen's compensation effect of accept-
ing 47**I. MEDICINES AND MEDICAL
TREATMENT***Subdivision Index*

Antiscorbutics 2

Chest of medicine 3, 4

Expenses for use 4

Duty generally 5

Expenses for use of chest of medicine
4

Extraordinary treatment 11

Intermediate port, stopping for treat-
ment 7

Liability for treatment generally 6

Offer and refusal of treatment 8

Ordinary or extraordinary treatment 11

Private treatment 9

Professional care 10

Purpose 1

Refusal of treatment 8

Treatment 6-13

Intermediate port 7

Liability generally 6

Offer and refusal 8

Ordinary or extraordinary treatment
11Particular disabilities and circum-
stances 13

Private treatment 9

Professional care 10

Work, performance 12

Withholding medicine 14

Work, performance 12

1. Purpose

Remedy of maintenance is to put seaman in as good a position, as to board and lodging as he would have been in if he had not become ill. *Perez v. Suwanee S. S. Co.*, C.A.N.Y.1956, 239 F.2d 180.

Maintenance and cure for seaman is intended to assist seamen who are incapacitated in the course of their employment and cannot earn enough to provide themselves with proper medical care and lodging and sustenance. *Wilson v. U. S.*, C.A.N.Y.1956, 229 F.2d 277.

The purpose of the historic implied contract to maintain an injured seaman arises from his helplessness during his injury, and is a right every court should watch with jealousy to maintain. *The City of Avalon*, C.C.A.Cal.1946, 156 F.2d 500.

The purpose of the rule that a vessel is liable for a seaman's maintenance and cure and wages if the seaman falls sick or is wounded in the service of the ship was to insure that a seaman, injured in the service of his ship, should not lack for the proper medical care and maintenance, although the injury was sustained through no fault of the vessel owner or her master. *Collins v. Dollar S. S. Lines*, D.C.N.Y.1938, 23 F.Supp. 395.

2. Antiscorbutics

The fact that the master of a vessel did not furnish his crew with the full supply of lime juice required by the law and the shipping articles, in the absence of any claim that the men suffered or were made sick by reason of such deprivation, and where no complaint was made on that ground, does not authorize the crew to abandon the ship before the end of her voyage, and recover their wages, nor entitle them to extra wages. *The Belvidere*, D.C.Ala.1898, 90 F. 108.

That there is a supply of limes on board a vessel, from which the crew are at liberty to help themselves, is not a compliance with this section requiring the master to serve the crew with a regular, daily allowance of antiscorbutics. *Petersen v. J. F. Cunningham Co.*, D.C.Cal.1896, 77 F. 211.

The penalty imposed upon the master for failing to serve his crew with antiscorbutics does not inure to the benefit of the crew. *Id.*

Where the evidence showed that certain sailors, lawfully shipped, were ill treated aboard the vessel, and were deprived of proper food and lime juice, or other antiscorbutics, it was a breach of

the ship's contract, entitling the men to leave the vessel, though the negligence might not have been that of the master of the ship, but of the ship chandler who supplied her. *Johnson v. The Karoo*, D. C.Wash.1892, 49 F. 651.

The provisions of this section are mandatory, and the captain will be liable to the infliction of a fine if convicted of an omission to comply with his duty in respect to the serving of lime juice, even though the omission should be followed by no ill consequence to the crew. *The Rence*, D.C.Cal.1890, 46 F. 805.

When no lime juice is served, and the crew are attacked with scurvy, the ship is liable for the damage the seamen sustain on account of the disease, in the absence of any proof that they had contracted scurvy before the voyage began. *Id.*

It is no excuse for not serving out lime juice to the crew daily, as required by this section, that the seamen preferred to receive coffee instead of lime juice. *Id.*

The consent of the crew to a violation of the positive provisions of this section can in no respect modify the master's liability for the offense, nor does it affect the right of the crew if their health is impaired. *Id.*

Under existing statutes, the owners of an English ship, with whom the plaintiffs had signed "regular English articles," in which it was agreed that the plaintiffs should be provided with a certain quantity of lime and lemon juice, or other antiscorbutics, during the voyage, were obliged to furnish and supply the plaintiffs with regular and wholesome provisions, and with lime and lemon juice, for the voyage; and, where the master of the vessel had failed to furnish such supplies, the owners of the vessel were liable for the master's default; and, in an action against the owners by the plaintiffs, for damages for sickness caused by the failure to supply proper provisions and lime and lemon juice, it was competent for the plaintiffs to show that there was a sickness, similar to their own, of other members of the crew, at the same time that the plaintiffs were sick. *Baxter v. Doe*, 1886, 8 N.E. 415, 142 Mass. 558.

3. Chest of medicine

Merchant vessels whose voyages may probably oblige them to stay at sea for considerable periods or take them far away from any port of supply, and for the outfitting of which the owners assume full responsibility, are required by this section and section 667 of this title

to be provided with a chest of medicines. *Welch v. Fallon*, D.C.Mass.1909, 181 F. 875.

There is no law requiring fishing vessels, which are generally not far distant from a port of supply, to carry a medicine chest; and as a rule the failure to do so cannot be charged as negligence, which will render the owners liable in damages to a member of the crew who is injured, and especially where the master and crew shipped on a lay, and are chargeable with the supplies and share in the profits of the voyage, in which case the master is the representative of the crew, rather than of the owners. *Id.*

When the sufficiency of the medicine chest is questioned, the proper evidence to be produced is the testimony of some reputable physician who has examined it. *The William Harris*, D.C.Me.1837, Fed.Cas.No.17,695.

A stipulation that the seamen shall pay for medical advice and medicines, without any condition that there shall be a suitable medicine chest, etc., is void, as contrary to the policy of this section. *Harden v. Gordon*, C.C.Me.1823, Fed.Cas. No.6,047.

The onus probandi in respect to the sufficiency of the medicine chest lies on the owner. *The Nimrod*, D.C.Me.1822, Fed.Cas.No.10,267. See, also, *Harden v. Gordon*, C.C.Me.1823, 2 Mason 541, 11 Fed.Cas.No.6,047.

4. — Expenses for use

Where seaman declined hospital treatment calculated to improve his condition, he could not recover from ship for expense of private physician and hospitalization. *Stokes v. U. S.*, D.C.N.Y. 1943, 55 F.Supp. 56, modified on other grounds 144 F.2d 82.

The expenses of medical attention on shore, where the seaman is removed from the vessel at his own request, are to be borne by the seaman, where the vessel is properly provided with a chest of medicines. *Pierce v. Patton*, D.C.Pa.1833, Fed.Cas.No.11,145.

When the ship is properly furnished with a medicine chest, the seamen must pay for surgical or medical advice and assistance. *Holmes v. Hutchinson*, D.C. Pa.1833, Fed.Cas.No.6,639. See, also, *Walton v. The Neptune*, D.C.Pa.1800, Fed.Cas.No.17,135.

A general averment that a vessel was supplied with a medicine chest according to law is not, of itself, sufficient evidence to discharge a master from his

liability for a physician's bill for attendance upon a sick seaman. *Freeman v. Baker*, D.C.N.Y.1833, Fed.Cas.No.5,084.

5. Duty generally

The measure of duty of ship to provide maintenance and cure of seamen for illness or injury during period of voyage depends on the circumstances, the seriousness of the injury or illness and the availability of aid. *De Zon v. American President Lines*, Cal.1943, 63 S.Ct. 814, 318 U.S. 660, 87 L.Ed. 1085, rehearing denied 63 S.Ct. 1025, 319 U.S. 780, 87 L.Ed. 1725. See, also, *Ladjimi v. Pacific Far East Line*, D.C.Cal.1951, 97 F. Supp. 174.

This section, and sections 669 and 674 of this title, prescribe a statutory duty in addition to the duty imposed upon shipowners by all maritime nations to provide proper medical treatment and attendance for seamen falling ill or suffering injury in the service of the ship. *The Iroquois*, Cal.1904, 24 S.Ct. 640, 194 U.S. 210, 48 L.Ed. 955.

The obligation of a shipowner to supply maintenance and cure to a seaman injured in the service of the ship is a continuing one under general maritime law. *MacInnes v. U. S.*, C.A.Mass.1951, 189 F.2d 738. See, also, *Danstoup v. The Richmond P. Hobson*, D.C.N.Y.1953, 12 F.Supp. 851.

The captain of a vessel owes the duty of providing medical care to an injured member of his crew. *Rodgers v. U. S. Lines Co.*, C.A.Va.1951, 189 F.2d 226.

Ship owner has duty to provide medical care for sick or injured seaman even at considerable cost and delay but ship owner must know or have reason to know of the need for medical care before the duty arises. *Grovell v. Stockard S. S. Co.*, C.A.Pa.1949, 176 F.2d 121.

Shipowner's obligation to furnish maintenance and cure to an injured seaman is an affirmative duty. *Murphy v. American Barge Line Co.*, C.C.A.Pa.1948, 169 F.2d 61, certiorari denied 69 S.Ct. 133, 335 U.S. 859, 93 L.Ed. 406.

Among the implied obligations of master and owner are positive duty to accord treatment to a seaman after he has been injured in service of the ship, and duty to supply ship with food and medicines and to furnish them to the crew during their voyage, and for a breach of such obligations an alternative right in rem or in personam arises in favor of a seaman injured by such treatment. *Cresci v. Standard Fisheries*, D.C.Cal.1925, 7 F. 2d 378.

Note 5

Whether a ship has fully discharged its duty of care and medical attendance to a seaman, who is injured or ill, depends upon the peculiar circumstances of each case. *McGuire v. Mutual Transit Co., D.C.N.Y.1919, 257 F. 360.*

Shipowner must furnish injured seaman all necessary care and maintenance. *Yates v. Dann, D.C.Del.1954, 124 F.Supp. 125, reversed on other grounds and vacated on other grounds 223 F.2d 64.*

A shipowner owes a seaman, during the voyage, food and shelter, and, in case of illness or injury, first aid, antiseptics, medicines and such surgery and nursing as is required and within power of shipowner to give. *Sims v. U. S. War Shipping Administration, D.C.Pa.1950, 91 F.Supp. 90, reversed on other grounds 186 F.2d 972, certiorari denied 72 S.Ct. 31, 342 U.S. 816, 96 L.Ed. 617.*

The duty of maintenance and cure derives from dependence of injured seaman on his ship, not from his individual deserts, and arises from his disability, not from anyone's fault. *Rich v. North Atlantic & Gulf S. S. Co., D.C.Pa.1949, 86 F.Supp. 990.*

Shipping company which serviced vessel under general agency agreement with United States through War Shipping Administration had duty toward crew members to live up to responsibility of husbanding the vessel subject to supervision of the government. *Sims v. Sprague S. S. Co., D.C.Pa.1949, 85 F.Supp. 563.*

A shipowner's duty to furnish injured seaman maintenance and cure is continuing one, and failure to meet such obligation may be ground for action by seaman for personal injuries. *Christo v. U. S., D.C.Pa.1949, 83 F.Supp. 960.*

6. Treatment—Liability generally

Seaman, as result of failure to act with reasonable diligence and to go to a hospital to find out what was really the matter with him and to secure proper treatment after injuries which allegedly occurred while in service of ship, could not hold shipowner liable for maintenance and cure. *Repsholdt v. U. S., C. A.III.1953, 205 F.2d 852, certiorari denied 74 S.Ct. 226, 346 U.S. 901, 98 L.Ed. 401, rehearing denied 74 S.Ct. 308, 346 U.S. 928, 98 L.Ed. 420.*

Where nature of his disability is such as to require it, and circumstances reasonably permit, injured seaman should be relieved from duty, moved to more comfortable quarters, brought suitable food, and receive nursing and medical treatment, and employer is under duty to provide ordinary and reasonable but not

extraordinary medical care and where disability apparently necessitates it and circumstances permit, a disabled seaman should be sent to a hospital. *Rodgers v. U. S. Lines Co., C.A.Va.1951, 189 F.2d 228.*

Right of seaman suffering from an incurable disease not caused by his employment to maintenance and cure up to time when no further improvement in his condition was to be expected, was not lost by his failure to report back to hospital as directed for a check-up two weeks after he had been discharged from hospital as needing no further hospitalization. *Muruaga v. U. S., C.A.N.Y.1949, 172 F.2d 318.*

Duty of maintenance and cure owing injured seaman is being performed in specie during hospitalization, and recommendation of attending physician that seaman be hospitalized is an expert judgment which makes the offer of hospitalization proper. *Murphy v. American Barge Line Co., C.C.A.Pa.1948, 169 F.2d 61, certiorari denied 69 S.Ct. 133, 335 U.S. 859, 93 L.Ed. 406.*

Duty to furnish medical attention to seamen does not require inquiry as to latent ailments. *Willey v. Alaska Packers' Ass'n, D.C.Cal.1926, 9 F.2d 937, affirmed 18 F.2d 8.*

A seaman, refused by the master proper treatment and care for injuries received on board, is entitled to compensation in damages from the ship. *The Rolph, D.C.Cal.1923, 293 F. 269, affirmed 299 F. 52, certiorari denied 45 S.Ct. 96, 263 U.S. 64, 69 L.Ed. 468.*

The duty of a ship is to give reasonable medical treatment under all circumstances to an injured seaman, and it will be held responsible for an error of judgment on the part of the officers, if their judgment is conscientiously exercised with reference to existing conditions. *The Van der Duyn, C.C.A.N.Y.1919, 232 F. 887.*

An offer of hospital services to a seaman is a fulfillment of a shipowner's obligation to furnish maintenance and cure. *Zackey v. American Export Lines, Inc., D.C.N.Y.1957, 152 F.Supp. 772.*

The duty of a shipowner to provide maintenance and cure is a duty to tender adequate hospitalization to the seaman. *Dobbs v. Lykes Bros. S. S. Co., D.C.La. 1956, 140 F.Supp. 732, affirmed 243 F.2d 55.*

Shipowner's liability for maintenance and cure does not extend to medical and hospital treatment which has been far-

nished by others. *Gomes v. Eastern Gas & Fuel Associates*, D.C.Mass.1954, 127 F. Supp. 435.

An injured seaman may not wilfully prolong for an indefinite time shipowner's liability for his maintenance and cure and seaman is bound to seek treatment needed to improve his condition, to avoid aggravation of injury and to undergo nonhazardous surgery if that offers a good prospect of a cure. *Gaynor v. U. S.*, D.C.Pa.1950, 90 F.Supp. 751.

Chief steward injured while employed on board vessel was not entitled to award for cure, where he received treatment for such injury at United States Marine Hospital. *Battice v. U. S.*, D.C.N.Y.1948, 79 F.Supp. 932.

In passing on question of right to maintenance and cure by seamen taken ill or injured while in service of ship, courts take cognizance of Marine Hospital service where seamen may be treated at a minimum expense, in some cases without expense, and limits recovery to expense of such maintenance and cure as is not at disposal of seaman through recourse to that service. *Bailey v. City of New York*, D.C.N.Y.1944, 55 F.Supp. 699, affirmed 153 F.2d 427.

7. — Intermediate port

The master of a sailing vessel is not chargeable with fault in failing to put back 480 miles from the place of accident to secure surgical attendance for a seaman who was disabled, although, with the winds then prevailing, it would have been possible to reach the port in three or four days, but the return to the place of the accident, in view of the head winds, might have taken as many weeks, nor was he required to stop at the Evangelist Islands, at the western end of the Straits of Magellan, which could have been reached by sailing one or two days out of the vessel's course, where the only building there was a lighthouse from which a small steamer was accustomed to put out to passing vessels in case a signal for relief was hoisted, and nothing could be done there except, possibly, to place the injured man upon a steamer bound north to Valparaiso or east to Sandy Point, near the middle of the straits, nor to put into San Carlos or Ancud, since these are not harbors at which vessels from the Atlantic and Pacific ports are in the habit of stopping and while the master was apprised by his charts of their existence, it might well be that he was ignorant of their population and surgical facilities; but the concurring decisions of the two lower courts, that the master was bound to

put into an intermediate port, was not disturbed by the federal Supreme Court, where the ship was about 1,500 miles from Valparaiso when the accident happened, and, with favorable winds, could have reached that port in 14 days, without causing a delay to the voyage of more than 5 or 6 days. *The Iroquois*, Cal.1904, 24 S.Ct. 640, 194 U.S. 240, 48 L. Ed. 955.

On injury to seaman during voyage, it was captain's duty to obtain medical aid at intermediate port, if he had no means of affording medical attention on board. *Morris v. U. S.*, C.C.A.N.Y.1924, 3 F.2d 538.

Where a seaman was seriously injured and there was no surgeon on board, it was the duty of the master to have him taken speedily to a hospital at a port which would have resulted in but slight deviation from the vessel's course, or, if the seaman waived his right to be taken to that hospital, the master was negligent in failing to have him removed to a hospital at the ship's destination for six days after her arrival in that port. *Unica v. U. S.*, D.C.Ala.1923, 287 F. 177.

A seaman, suffering from injury or illness in the service of a ship, is entitled to medical treatment and attendance, and the master is required to exercise reasonable judgment as to whether the ship shall stop in the nearest port to provide such care and medical attendance. *McGuire v. Mutual Transit Co.*, D.C.N.Y. 1919, 257 F. 360.

8. — Offer and refusal

Injured seaman whom doctors recommended should enter various government hospitals, but who refused and went instead to live on ranch of parents, was properly denied claim for maintenance and cure in view of evidence that he had incurred no expense or liability for care and support at home of his parents. *Johnson v. U. S.*, Cal.1948, 68 S.Ct. 391, 333 U.S. 46, 92 L.Ed. 463, motion denied 68 S.Ct. 783, 333 U.S. 865, 92 L.Ed. 1143.

Generally, an injured seaman's refusal of care and treatment proffered by shipowner discharges obligation of maintenance and cure, in absence of showing of reasonable grounds for such refusal. *Macris v. Sociedad Maritima San Nicolas*, S. A., C.A.N.Y.1957, 245 F.2d 708.

Where seaman has opportunity to use free marine hospital, but refuses to do so, he has no right to maintenance and cure and also a seaman loses his right to maintenance and cure where he refuses to seek medical attention and

Note 8

thereby retards his recovery, or where he prematurely leaves hospital against doctor's orders. *Wilson v. U. S.*, C.A. N.Y.1956, 229 F.2d 277.

A seaman's right to maintenance and cure is forfeited by voluntary rejection of hospital care, but such rule is not inexorably applied, and other factors present must be taken into account and given effect. *Luth v. Palmer Shipping Corp.*, C.A.Pa.1954, 210 F.2d 224, certiorari denied 74 S.Ct. 733, 347 U.S. 976, 98 L.Ed. 1116.

In seaman's action in admiralty for maintenance and cure, findings that seaman's failure to avail himself of surgical treatment in absence of assurance from employer that it would pay him, during his convalescence, the maintenance to which he was clearly entitled, did not amount to a voluntary rejection of treatment, and that refusal to accept surgical treatment under the circumstances was reasonable, were not clearly erroneous. *Id.*

Voluntary refusal of seaman to submit to needed hospital care would deprive seaman suffering from an incurable disease not caused by his employment, of his right to maintenance and cure up to time when no further improvement in his condition was to be expected. *Munuga v. U. S.*, C.A.N.Y.1949, 172 F.2d 318.

Shipowner's obligation to furnish injured seaman with maintenance and cure was not discharged by offer to provide hospitalization at a place between 200 and 300 miles distant unaccompanied by provision for transportation to the hospital, and, where seaman was in considerable physical distress, his failure to make the trip did not amount to a refusal of treatment and did not preclude allowance for maintenance and cure. *Murphy v. American Barge Line Co.*, C.C.Pa.1948, 169 F.2d 61, certiorari denied 69 S.Ct. 133, 335 U.S. 859, 93 L.Ed. 406.

The fact that treatment itself would cause some acute physical discomfort or that going to receive the treatment might involve a journey entailing discomfort is not a legal excuse for failure of injured seaman to accept medical treatment proffered by shipowner. *Id.*

The government fully performed its shipowner's contract to provide maintenance and cure by giving employee in San Francisco a certificate of admission to Marine Hospital there whose service is available to all shipowners and treats all seamen whom owner certified to it for care and cure and employee who failed without excuse, to report to the

hospital cannot recover damages for failure to provide maintenance and cure. *U. S. v. Loyola*, C.C.A.Cal.1947, 161 F.2d 126.

A seaman who allegedly contracted tuberculosis while employed as engineer on a city-owned ferryboat forfeited any right to maintenance and cure by his voluntary rejection of hospital care. *Bailey v. City of New York*, C.C.A.N.Y. 1946, 153 F.2d 427.

Where X-rays taken of injured seaman could have been taken free of charge at a marine hospital which claimant refused, he could not recover the cost of taking such X-rays. *Id.*

A seaman cannot obtain an award for maintenance and cure where he has declined proper medical treatment calculated to improve his condition, but if injured seaman has made bona fide attempt to avail himself of tendered medical treatment and under circumstances has been required to obtain appropriate treatment elsewhere, he may recover from owners of vessel expenses of maintenance and cure that was not at his disposal and seasonably obtainable through recourse to proffered facilities. *Van Camp Sea Food Co. v. Nordyke*, C.C.A.Cal.1944, 140 F.2d 902, certiorari denied 64 S.Ct. 1273, 322 U.S. 760, 88 L.Ed. 1587.

As regards right to maintenance and cure, seaman was not required to volunteer to go to marine hospital for treatment, though he could not refuse to go if employer offered treatment there. *Stevens v. R. O'Brien & Co.*, C.C.A.Mass. 1933, 62 F.2d 632.

Stewardess injured while working on vessel declining offer of hospital treatment cannot maintain suit for maintenance and cure. *Marshall v. International Mercantile Marine Co.*, C.C.A.N.Y.1930, 39 F.2d 551.

Where an injured seaman was placed in a marine hospital by the vessel's master, but left immediately because he was unsatisfied with the first meal served, the vessel was not liable for his maintenance and care thereafter at home and in other hospitals. *The Santa Barbara*, C.C.A.N.Y.1920, 263 F. 369.

A lake steamship was not liable for neglecting to give medical attendance and care to its steward, who became ill at Duluth with heart trouble, from which he died, where he declined to go to a hospital at Duluth and other ports, continued in service, assured the master that he was suffering from nothing serious, and there were no outward symp-

toms to advise the master to the contrary. *McGuire v. Mutual Transit Co.*, D.C.N.Y.1919, 257 F. 380.

Where facilities of United States Public Health Services were made available to a seaman by shipowner, and such facilities were rejected by seaman, shipowner was not liable for maintenance and cure. *Zackey v. American Export Lines, Inc.*, D.C.N.Y.1957, 152 F.Supp. 772.

Where seaman contracting a kidney ailment was provided marine hospital care by the employer but rejected it and was maintained at expense of his mother, who also paid for his medical care at the same time, he incurred no expense or liability for such items and could not recover from the shipowner therefor. *Dobbs v. Lykes Bros. S. S. Co.*, D.C.La. 1956, 140 F.Supp. 732, affirmed 243 F.2d 55.

Refusal of seaman who had suffered a recurrence of an earlier manifestation of tuberculosis to undergo hospitalization pursuant to advice of physicians who had examined seaman in March and May of 1944, although he was aware of seriousness of his condition, and failure to enter any hospital until February, 1947, constituted forfeiture of seaman's right to maintenance and cure. *Renner v. U. S.*, D.C.N.Y.1955, 132 F.Supp. 810.

Where seaman's hernia condition, which purportedly had resulted from injury received while employed by a third person, became apparent again while seaman was serving aboard vessel, seaman was entitled to an award for maintenance, even though seaman had refused to undergo an operation at time of previous injury but apparently had acted in good faith in relying on advice of another doctor that wearing of belt would reduce swelling. *Keegan v. U. S.*, D.C.N.Y.1953, 113 F.Supp. 6.

Even if tubercular seaman was not barred from claiming maintenance and cure because he had, at time he signed on ship, actively concealed information that he was tubercular, his subsequent refusal to accept maximum benefit of hospitalization, as evidence by his discharge at his own request and his earlier disciplinary discharges, disqualified him from making such claim. *Weller v. U. S.*, D.C.Cal.1952, 106 F.Supp. 502.

Where injured seaman left ship in January but did not apply for medical treatment until February and left hospital of his own choice against medical advice, seaman was not entitled to cost of maintenance during time in hospital or to recover for maintenance while he

refused to accept hospitalization previous to entering hospital. *Hoff v. U. S.*, D.C.Wash.1949, 87 F.Supp. 909.

Forfeiture, resulting from refusal to submit to needed hospital care, arises when the seaman either knows or should have known that hospital care would improve his condition. *Aldrich v. Luckenbach S. S. Co.*, D.C.N.Y.1949, 87 F. Supp. 703.

As long as maintenance and cure at a seamen's hospital is available to injured seaman and he is receiving such maintenance and cure, he must accept it or he is not entitled to a decree for maintenance and cure. *Mosseller v. U. S.*, D.C.N.Y.1947, 73 F.Supp. 827.

A seaman having declined the opportunity for treatment at a tuberculosis hospital as offered and having left another hospital contrary to medical advice was not entitled to maintenance and cure. *Moriarty v. Oliver I. Olson & Co.*, D.C.Cal.1947, 72 F.Supp. 446.

After tender and refusal of proper maintenance and cure, a seaman can no longer hold his employer therefor, especially where he leaves the vessel for employment elsewhere. *The W. H. Hoodless*, D.C.Pa.1941, 38 F.Supp. 432.

Injured seaman's right to maintenance and cure must be invoked in reasonable manner, and proffer of reasonably adequate medical attention may not be refused. *The Oriskany*, D.C.Md.1933, 3 F. Supp. 805.

Injured seaman must avail himself of proffered medical care, but if seaman has made a bona fide attempt to avail himself of such treatment, and under circumstances has been required to obtain appropriate treatment elsewhere, he may recover expenses, and maintenance and cure from shipowners. *Cantrill v. American Mail Line*, 1953, 257 P.2d 179, 42 Wash.2d 590.

In maintenance and cure action, brought under the general maritime law, by seaman who fell down ladder on vessel, evidence was not sufficient to establish that seaman had voluntarily refused available treatment at marine hospital. *McAllister v. Magnolia Petroleum Co.*, Tex.Civ.App.1956, 290 S.W.2d 313, ref. n. r. e., certiorari granted 77 S.Ct. 580, 352 U.S. 1000, 1 L.Ed.2d 545.

In maintenance and cure action, brought under general maritime law, by seaman who fell down ladder on vessel, evidence was sufficient to establish that seaman was undergoing cure. *Id.*

Note 9

9. — Private treatment

Injured seaman's election to receive private medical treatment for injuries sustained while aboard respondent's steamship was not a bar to recovery of maintenance from respondent. *Rodgers v. U. S. Lines Co.*, C.A.Va.1951, 189 F.2d 226.

In an action for maintenance and cure, an injured seaman is entitled to recover cost of private medical attention which provides him benefits he could not obtain by recourse to free marine hospital service. *McManus v. Marine Transport Lines*, C.C.A.N.Y.1945, 149 F.2d 969, certiorari denied 66 S.Ct. 231, 326 U.S. 773, 90 L.Ed. 467.

Where libellant had left the marine hospital he was not entitled to recover fees paid to his own physician or his private hospital expenses. *Stokes v. U. S.*, C.C.A.N.Y.1944, 144 F.2d 82.

Where injured assistant port engineer refused to enter marine hospital, recommended by public health physician to whom employer sent him but instead, went to his own personal physician who put him in a private hospital, refusal of the maritime hospital care barred any claim by the engineer for maintenance and cure. *Ouzts v. A. P. Ward & Son, Inc.*, D.C.Fla.1956, 146 F.Supp. 733.

Where master referred seaman to physician for treatment, such referral constituted an authorization by owners to seaman to seek such private service, and seaman could recover expense of such treatment, as part of his cure, although such treatment was available free at marine hospital. *Vitco v. Joncich*, D.C. Cal.1955, 130 F.Supp. 945, affirmed 234 F. 2d 161.

Where time for recommending and giving further treatment had passed before seaman left Marine Hospital, and no offer had been made to supply necessary treatment, seaman could recover amount paid private physician and hospital in connection with having plate inserted to cover hole in his skull. *Nunes v. Farrell Lines*, D.C.Mass.1955, 129 F.Supp. 147, affirmed in part, reversed in part on other grounds, 227 F.2d 619.

10. — Professional care

A ship's officer cannot be held to the same standard of skill as a professional medical man, as regards question whether vessel owner was liable for failure to provide prompt, adequate and proper medical treatment to injured seaman. *Barlow v. Pan Atlantic S. S. Corporation*, C.C.A.N.Y.1939, 101 F.2d 697.

Where a pantryman on a ship had been brutally assaulted, and there was a possibility that his nose was fractured, but whether it was in fact could not be detected by an ordinary examination, the failure of the ship's physician to send him to a hospital for expert treatment was an error of judgment, for which the shipowner would not be liable. *Geistlinger v. International Mercantile Marine Co.*, D.C.N.Y. 1924, 295 F. 176.

An employer was not liable to injured seaman for negligence of surgeon provided by the employer unless employer knew the surgeon was unskilled. *Bonam v. Southern Menhaden Corporation*, D.C.Fla.1922, 284 F. 360.

An action will not lie against the ship for an error of diagnosis on the part of the officers with respect to an injury to one of the crew. *The Van der Duyn*, D.C.N.Y.1913, 251 F. 746, reversed on other grounds, 261 F. 837.

A vessel was liable for damages for failure to take an injured seaman to a marine hospital, where he was left at a port 20 miles from the hospital in charge of a physician, and his injury was aggravated by unskillful treatment. *The C. S. Holmes*, Wash.1916, 237 F. 785, 150 C.C.A. 539.

Where injured seaman was advised by physician to administer self-treatment in an attempt to improve the condition of his hand after discharge from hospital and seaman had done so but the treatment had failed, such failure did not bar recovery for maintenance and cure since the basis of cure and maintenance is that the ship must make all reasonable efforts to effect the cure. *Triantafilos v. U. S.*, D.C.Pa.1949, 87 F.Supp. 965, affirmed 179 F.2d 310.

A steamship owner is not liable for negligence of a competent ship's physician, and the master may rely upon his advice received in good faith, and, so acting, no liability can be predicated upon error or mistake. *Leone v. Booth S. S. Co.*, 1921, 133 N.E. 439, 232 N.Y. 183.

11. Ordinary or extraordinary treatment

The owner of a vessel is liable for the expenses of effecting a cure for a seaman injured in his employ, so far as a cure is possible by ordinary medical means, and this liability exists even where the owner has not been negligent, and may be enforced in rem, and is not relieved by the negligence of the seaman, provided he has not been grossly

negligent; but this does not include extraordinary medical treatment or treatment which extends after a cure has been as nearly effected as is possible in a particular case. *The C. S. Holmes*, D.C.Wash.1913, 209 F. 970.

Shipowner's obligation to render medical assistance and treatment to seaman injured in service of vessel continues for a reasonable time, not limited by duration of voyage, but does not extend beyond expense of effecting a cure by ordinary medical means, and does not include extraordinary medical treatment or treatment after cure effected as completely as possible in the particular case. *Donovan v. Esso Shipping Co.*, D.C.N.J. 1957, 152 F.Supp. 347.

12. — Work, performance

Where there is no danger to ship or other emergency, requiring injured seaman to perform work substantially detrimental to his condition is in effect to fail and refuse to provide care required by law. *The Point Fermin*, C. C.A.Tex.1934, 70 F.2d 602.

In *Hibel* by seaman employed as oiler on steamship for failure of master to provide proper medical care for injuries to hand, evidence established that seaman's working after injury contrary to doctor's instructions was not voluntary but required by master without necessity, authorizing recovery of damages. *Id.*

Master's requirement that seaman work after injuries on penalty of losing pay was not actionable wrong, where there was no physician on board and injuries were believed due to quarrel. *O'Bryant v. States S. S. Co.*, C.C.A.Cal.1929, 36 F. 2d 305.

Injured seaman, who was forced to work at time when he was entitled to be maintained in rest for cure, was entitled to compensation for such period. *Morris v. U. S.*, C.C.A.N.Y.1924, 3 F.2d 588.

Where public health reports disclosed that injured seaman was at no time discharged from out-patient's status, and testimony in action for maintenance and cure established that he was still suffering from a painful condition and was in need of treatment, he would not be penalized because he had returned to work during periods when he should have been convalescing or reporting to hospital for further treatment. *Yates v. Dann*, D.C.Del.1954, 124 F.Supp. 125, reversed on other grounds and vacated on other grounds 223 F.2d 64.

T.46a U.S.C.A. §§ 251-681—29

13. — Particular disabilities and circumstances

Where as result of fall on respondent's steamship assistant engineer's chin was severely lacerated, numerous of his teeth were broken and shattered and he received painful injuries to his neck and right arm, and he received first aid treatment from the purser, but purser had no certificate as a pharmacist mate and no medical training except a first aid course, and on vessel's arrival in France, engineer was taken to dentist but nothing of consequence was done for him there, and at another port in France he asked for medical treatment but received none, and during vessel's return voyage to the United States suffered greatly, respondent breached its duty to furnish medical and dental care to injured engineer. *Rodgers v. U. S. Lines Co.*, C.A.Va.1951, 189 F.2d 226.

Where seaman who had sustained injury while on shore leave was first treated by purser, and later by a general practitioner and an eye specialist, and form of treatment prescribed by general practitioner was approved by specialist and continued by the purser, and consultations at the time and treatment prescribed did not give master of ship reason to know that injury involved anything more than a black eye, the treatment given satisfied the requirements of reasonable care. *Grovell v. Stockard S. S. Co.*, C.A.Pa.1949, 176 F. 2d 121.

X-ray picture of hand was not treatment, but a precaution so far as concerns seaman's cause of action for maintenance and cure. *Manders v. Lykes Bros. S. S. Co.*, C.C.A.N.Y.1946, 153 F.2d 942.

Seaman who entered Marine Hospital with diagnosis of venereal disease and who was given antisyphilitic therapy and circumcision, was not entitled to maintenance and cure for such period of hospitalization. *Capurro v. The All America*, D.C.N.Y.1952, 106 F.Supp. 693.

14. Withholding medicine

Wrongfully withholding suitable medicines from a seaman is a violation of the contract. *Crapo v. Allen*, D.C.Mass. 1849, Fed.Cas.No.3,360.

II. MAINTENANCE AND CURE UNDER GENERAL MARITIME LAW

Subdivision Index

Abatement 98

Absence without leave, termination of liability 73

- Adequacy of amount 139
- Admissibility of evidence 120
- Alternative or cumulative remedies 46
- Amount of award
 - Generally 138
 - Adequacy 139
 - Excessiveness 140
 - Particular cases 141
 - Particular cases, daily rate 142
- Ancient maritime laws 42
- Apportionment 146
- Assumption of risk 99
- Award, determination of 132-142
 - Adequacy of amount 139
 - Amount generally 138
 - Credits 133
 - Excessiveness of amount 140
 - Expenses incurred 134
 - Living costs 135
 - Nursing services 136
 - Particular amounts awarded 141
 - Particular amounts awarded; daily rate 142
 - Transportation expenses 137
- Burden of proof 118, 119
 - Release or settlement 119
- Causation 60
- Certainty, termination of liability 75
- Commencement of liability 69
- Compensation 55
- Continuation of need, termination of liability 77
- Contract or tort 57
- Contractual right 54
- Contributory negligence 100
- Convalescence, termination of liability 86
- Credits 133
- Cumulative remedies 46
- Cure, definition 49
- Definition
 - Cure 49
 - Maintenance 48
- Demand 97
- Discharge
 - From employment, termination of liability 85
 - From hospital or treatment, termination of liability 84
 - Of obligation 101
- Disclosure of health, failure to make 102-104
 - Physical examination 103
 - Specific impairments of health 104
- Discretion of court 93
- Dismissal 94
- Estoppel 105
- Evidence
 - Admissibility 120
 - Liability established 129
 - Liability not established 131
 - Weight and sufficiency generally 121
- Excessiveness of amount 140
- Expenses incurred, element of award 134
- Fact questions 122
- Federal laws 44
- Fellow servant rule 106
- Foreseeable period, termination of liability 76
- Gross negligence 110
- Historical 41-44
 - Ancient maritime laws 42
 - Federal laws 44
 - Liability Convention 43
- Independent contractor, employee of 51
- Instructions 125
- Insurer 56
- Interest 143
- Intoxication 111
- Joinder of causes 95
- Judicial notice 117
- Jurisdiction and venue 90
- Jury
 - Questions for 124
 - Trial by 123
- Laches 108
- Law or admiralty as remedy 45
- Law or fact questions 122
- Liability Convention 43
- Liability established 128, 129
 - Evidence 129
- Liability not established 130, 131
 - Evidence 131
- Lien 149
- Limitations 107
- Living costs 135
- Maximum degree of improvement, termination of liability
 - Generally 82
 - Particular ailments 83
- Medieval rule, termination of liability 72
- Misconduct 109-113
 - Generally 109
 - Gross negligence 110
 - Intoxication 111
 - Particular cases 113
 - Venereal diseases 112
- Mitigation of damages 145
- Negligence 58
 - Relation to section 688 59
- New trial 147
- Notice 96
- Nursing services, award, determination of 136
- Off duty periods, termination of liability 74
- Part time work, termination of liability 88
- Persons
 - Entitled to sue 67
 - Liable 68
- Physical examination, nondisclosure of health as affected by 103
- Place injury occurred, negligence 61
- Questions
 - Jury 124
 - Law or fact 122
- Reasonable, termination of liability 78
- Reemployment, termination of liability 87

Release or settlement 114
 Burden of proof 119
 Rem, proceeding in 91
 Remand 151
 Remedy
 Alternative or cumulative 46
 Law or admiralty 45
 Res judicata 148
 Review 150
 Rules governing 52-61
 Generally 52
 Causation 60
 Compensation 55
 Contract or tort 57
 Contractual right 54
 Insurer 56
 Negligence 58
 Negligence and relation to section
 688 59
 Place injury occurred 61
 Status, predication upon 53
 Seamen 50
 Service of ship, employee in 62-65
 Shore duties 68
 Shore leave 64
 Vacation 65
 Set-off 115
 Settlement 114
 Burden of proof 119
 Shore
 Duties 63
 Leave 64
 Specific impairments of health, nondis-
 closure of 104
 Status, predication upon 53
 Subsequent proceedings 92
 Summary judgment 127
 Suspension of liability 70
 Termination of liability 71-89
 Absence without leave 73
 Certainty 75
 Continuation of need 77
 Convalescence 86
 Discharge from employment 85
 Discharge from hospital or treatment
 84
 Foreseeable period 76
 Maximum degree of improvement
 generally 82
 Medieval rule 72
 Off duty periods 74
 Part time work 88
 Particular ailments, maximum de-
 gree of improvement 83
 Particular cases 89
 Reasonable time 78
 Reemployment 87
 Voyage, after termination of 80
 Voyage, continuation of 79
 Voyage, reasonable time after termi-
 nation of 81
 Termination of voyage 66
 Transportation expenses, element of
 award 137
 Trial by jury 123
 Vacation 65

Venereal diseases 112
 Venue 90
 Verdict 126
 Voyage
 Liability after termination of 80
 Liability during continuation of 79
 Liability reasonable time after ter-
 mination of 81
 Termination of 66
 Wages 144
 Waiver 116
 Weight and sufficiency of evidence 121
 Generally 121
 Liability established 129
 Liability not established 131
 Workmen's compensation, effect of ac-
 cepting 47

41. Historical

"From the earliest times maritime na-
 tions have recognized that unique haz-
 ards, emphasized by unusual tenure and
 control, attend the work of seamen. The
 physical risks created by natural ele-
 ments and the limitations of human
 adaptability to work at sea enlarge the
 narrower and more strictly occupational
 hazards of sailing and operating vessels.
 And the restrictions which accompany
 living aboard ship for long periods at
 a time combine with the constant shut-
 tling between unfamiliar ports to de-
 prive the seaman of the comforts and
 opportunities for leisure, essential for
 living and working, that accompany
 most land occupations. Furthermore,
 the seaman's unusual subjection to au-
 thority adds the weight of what would
 be involuntary servitude for others to
 these extraordinary hazards and limita-
 tions of ship life.

"Accordingly, with the combined ob-
 ject of encouraging marine commerce
 and assuring the well-being of seamen,
 maritime nations uniformly have im-
 posed broad responsibilities for their
 health and safety upon the owners of
 ships. In this country these notions
 were reflected early, and have since been
 expanded, in legislation designed to se-
 cure the comfort and health of seamen
 aboard ship, hospitalization at home and
 care abroad. The statutes are uniform
 in evincing solicitude that the seaman
 shall have at hand the barest essentials
 for existence. They do this in two ways.
 One is by recognizing the shipowner's
 duty to supply them, the other by pro-
 viding for care at public expense. The
 former do not create the duty. That ex-
 isted long before the statutes were
 adopted. They merely recognize the
 preexisting obligation and put specific
 legal sanctions, generally criminal, be-

Note 41

hind it. Compare *Harden v. Gordon*, C. C., 11 Fed.Cas. page 480, No. 6,047, 2 Mason 541; *The George*, C.C., 10 Fed.Cas. page 205, No. 5,329, 1 Sumn. 151; *The Forest*, D.C., 9 Fed.Cas. page 443, No. 4-936, 1 Ware 429. The provisions for public assistance were not intended to relieve the shipowner of his duty. On the contrary their purpose was to make sure the seaman would have care, if the employer should fail to give it and in the rarer cases to which his obligation does not extend. The legislation therefore gives no ground for making inferences adverse to the seaman or restrictive of his rights. Cf. *Reed v. Canfield*, C.C., 20 Fed.Cas. page 426, No. 11,641, 1 Sumn. 195. Rather it furnishes the strongest basis for regarding them broadly, when an issue concerning their scope arises, and particularly when it relates to the general character of relief the legislation was intended to secure." *Aguilar v. Standard Oil Co. of New Jersey*, N.Y.1943, 63 S.Ct. 930, 318 U.S. 724, 87 L.Ed. 1107.

In its origin, maintenance and cure must be taken as an incident to status of seaman in employment of his ship, which is peculiarly within province of maritime law. *O'Donnell v. Great Lakes Dredge & Dock Co.*, Ill.1943, 63 S.Ct. 488, 318 U.S. 36, 87 L.Ed. 596.

Although maritime law permits seaman full freedom of contract in fixing term of employment and rate of pay, the established public policy of the maritime law is to protect from impairment the seaman's historic rights to maintenance and cure if he becomes ill, and wages for the term of his employment, and although courts of admiralty view with favor that which augments his rights, they look with disfavor upon agreements in derogation of them. *Vito v. Joncich*, D.C.Cal.1955, 130 F.Supp. 945, affirmed 234 F.2d 161.

42. — Ancient maritime laws

Ancient maritime laws imposing liability upon a shipowner for maintenance and cure of seamen becoming ill or injured during their service are: Laws of Oleron, Articles VI, VII; Laws of Wisbuy, Articles XVIII, XIX; Laws of the Hanse Towns, Articles XXXIX, XLV; Marine Ordinances of Louis XIV, of Marine Contracts, Title Fourth, Articles XI, XII, compiled in 30 Fed.Cas. 1171-1216; cf. *Harden v. Gordon*.

The Laws of Oleron are typical of the provision for injuries: "If any of the mariners hired by the master of any vessel, go out of the ship without his leave, and get themselves drunk, and

thereby there happens contempt to their master, debates, or fighting and quarrelling among themselves, whereby some happen to be wounded: in this case the master shall not be obliged to get them cured, or in any thing to provide for them, but may turn them and their accomplices out of the ship; * * * but if by the master's orders and commands any of the ship's company be in the service of the ship, and thereby happen to be wounded or otherwise hurt, in that case they shall be cured and provided for at the costs and charges of the said ship." Article VI. *Aguilar v. Standard Oil Co. of New Jersey*, N.Y.1943, 63 S.Ct. 930, 318 U.S. 724, 87 L.Ed. 1107.

43. — Liability Convention

Duty of ship to provide maintenance and cure of seaman for illness or injury during period of voyage has not been restricted by the Shipowners' Liability Convention of Oct. 24, 1936, art. 12, 54 Stat. 1700. *De Zon v. American President Lines*, Cal.1943, 63 S.Ct. 814, 318 U.S. 660, 87 L.Ed. 1065, rehearing denied 63 S.Ct. 1025, 319 U.S. 780, 87 L.Ed. 1725.

In view of fact that liability under Shipowners' Liability Convention is equated to liability for maintenance and cure, recovery could not be had under Convention for funeral expenses of salvaging company employee who died as result of injuries sustained while at work on vessel being salvaged, against owner thereof, where there was no contractual relationship between decedent and owners. *Turner v. Wilson Line of Mass., Inc.*, D.C.Mass.1956, 142 F.Supp. 264.

Application of American admiralty law to libel by seaman for wages and maintenance is consistent with shipowner's Liability Convention, since the American admiralty law gives a seaman more favorable conditions than the Convention. *Warren v. U. S.*, D.C.Mass.1948, 75 F.Supp. 836.

44. — Federal laws

Federal laws designed to secure the comfort and health of seamen aboard ship are: H. g., Act July 20, 1790, c. 29, § 8, 1 Stat. 134; Act June 7, 1872, c. 322, §§ 40, 41, 17 Stat. 270, 46 U.S.C.A. §§ 666, 667, requiring that ships carry a minimum supply of medicines and antiscorbutics; Act July 20, 1790, c. 29, § 9, 1 Stat. 135; Act June 7, 1872, c. 322, § 38, 17 Stat. 269; Act Dec. 21, 1898, c. 23, § 12, 30 Stat. 758; R.S. § 4565; 46 U.S.C.A. §§ 661, 662, requiring that ships carry sufficient and adequate stores and water for the crew. See also 17 Stat. 277, 46

U.S.C.A. § 713; Act June 7, 1872, c. 322, § 42, 17 Stat. 270, R.S. § 4572; Act June 26, 1894, c. 121, § 11, 23 Stat. 56; Act Dec. 21, 1898, c. 28, § 15, 30 Stat. 759; 46 U.S.C.A. §§ 669, 670, providing that certain basic clothes and heating facilities be furnished by the shipowner; 46 U.S.C.A. §§ 672-672c, 673, prescribing qualifications and quotas for crews, and watch divisions. *Aguilar v. Standard Oil Co. of New Jersey*, N.Y.1943, 63 S.Ct. 930, 318 U.S. 724, 87 L.Ed. 1107.

Federal laws providing for hospitalization at home of seamen are: Act July 16, 1798, c. 77, 1 Stat. 605; Act March 2, 1799, c. 36, 1 Stat. 729; 2 Stat. 192; R.S. §§ 4803-4813; 24 U.S.C.A. §§ 1, 6, 8, 11, 193. *Id.*

Federal laws providing for the care of seamen while abroad are: Act Feb. 28, 1803, c. 9, § 4, 24 U.S.C.A. §§ 3, 4, 14, 17, 16, 6; 2 Stat. 204; 2 Stat. 651; R.S. § 4577; 46 U.S.C.A. § 678, requiring consuls in the case of sick and destitute seamen abroad to provide for their subsistence and return passage to the United States. *Id.*

The right to maintenance and cure is conferred by general maritime law, and general maritime law is not state law but a body of federal law. *Doucette v. Vincent*, C.A.Mass.1952, 194 F.2d 834.

45. Remedy—Law or admiralty

A seaman's action for cure and maintenance may be brought either in admiralty or at law. *Lindquist v. Dilkes*, C.C.Pa.1942, 127 F.2d 21.

46. — Alternative or cumulative

A recovery in one proceeding of indemnity for seaman's injuries is not a bar to a subsequent proceeding for maintenance, cure and wages and for indemnity for injuries occasioned by unseaworthiness. *Runyan v. Great Lakes Dredge & Dock Co.*, C.C.A.Ohio 1944, 141 F.2d 396.

Although maintenance and cure is a cumulative remedy, it is meant to compensate a seaman for what he has not recovered elsewhere, and a seaman is not entitled to be paid twice in full for the same thing. *Stendze v. The Neptune*, D.C.Mass.1955, 135 F.Supp. 801.

Where seaman was injured in bus accident while on shore leave, fact that seaman obtained a judgment for damages arising from his injury from bus company, in an action based on its negligence, did not bar seaman's right to maintenance and cure. *Gaynor v. U. S.*, D.C.Pa.1950, 90 F.Supp. 751.

Under general maritime law, a seaman is entitled to remedies of maintenance and cure and to damages for injury or death for failure of shipowner to furnish a seaworthy vessel or safe and proper appliances, and his rights have been enlarged under the Jones Act, section 688 of this title, so that he can also recover damages for injuries or death sustained in course of his employment as result of negligence. *Alaska Packers Ass'n v. Alaska Indus. Bd.*, D.C.Alaska 1950, 88 F.Supp. 172, affirmed 186 F.2d 1015.

The right of a seaman to maintenance, cure and wages, implied in law as a contractual obligation arising out of the nature of the employment, is independent of the right to indemnity or compensatory damages for an injury caused by negligence. *Rich v. North Atlantic & Gulf S. S. Co.*, D.C.Pa.1949, 86 F.Supp. 989, amended on other grounds 86 F.Supp. 990.

A libellant is not barred from recovering in a subsequent suit against a shipowner for maintenance and cure, unless maintenance and cure are definitely shown to have been actually included in recoveries in indemnity suits for unseaworthiness or damages under section 688 of this title. *Muise v. Abbott*, D.C.Mass. 1945, 60 F.Supp. 561, affirmed 160 F.2d 590.

47. Workmen's compensation, effect of accepting

An injured assistant port engineer was not entitled to recover for maintenance and cure from injury received where he elected to receive equivalent of workmen's compensation from the employer's insurance carrier. *Ouzts v. A. P. Ward & Son, Inc.*, D.C.Fla.1956, 146 F.Supp. 733.

Where seaman, injured in jumping from ship to dock, accepted stated workmen's compensation, he could not recover in admiralty for maintenance, since compensation was substitute for maintenance and there was an accord and satisfaction. *Owens v. Hammond Lumber Co.*, D.C.Cal.1934, 8 F.Supp. 392.

48. Definition—Maintenance

Under admiralty law, "maintenance" means subsistence during disability. *Mullen v. Fitz Simons & Connell Dredge & Dock Co.*, C.A.Ill.1951, 191 F.2d 82, certiorari denied 72 S.Ct. 173, 342 U.S. 888, 96 L.Ed. 666.

An injured seaman is entitled to the same maintenance as other seamen while at sea, and maintenance to which he is entitled after leaving the ship during

Note 48

time needed for treatment and cure is the equivalent of that ordinarily furnished a seaman at sea. *McCarthy v. American Eastern Corp.*, C.A.Pa.1949, 175 F.2d 727.

Maintenance, in essence, is subsistence for seaman while he is being cured. *Ballard v. Alcoa S. S. Co.*, D.C.Ala.1954, 122 F.Supp. 10.

"Maintenance" of an injured seaman, covers food and lodging at the expense of the shipowner. *La Fontaine v. The G. M. McAllister*, D.C.N.Y.1951, 101 F. Supp. 826.

Under rule that vessel and owner must provide maintenance and cure for seaman injured or falling ill while in service, the "maintenance" exacted is comparable to that to which seaman is entitled while at sea. *Bailey v. City of New York*, D.C.N.Y.1944, 55 F.Supp. 699, affirmed 153 F.2d 427. See, also, *Vitco v. Joncich*, D.C.Cal.1955, 130 F.Supp. 945, affirmed 234 F.2d 161.

49. — Cure

The duty of ship to provide maintenance and cure of seaman for illness or injury during period of voyage, is not a duty to "cure" in a literal sense, but to provide care, including nursing and medical attention. *De Zon v. American President Lines*, Cal.1943, 63 S.Ct. 814, 318 U.S. 660, 87 L.Ed. 1065.

Under admiralty law, "cure" means medical care and attention. *Mullen v. Fitz Simons & Connell Dredge & Dock Co.*, C.A.Ill.1951, 191 F.2d 82, certiorari denied 72 S.Ct. 173, 342 U.S. 838, 96 L.Ed. 668.

"Medical treatment" as respects seaman's right to maintenance during disability due to injury sustained in course of employment may include advice to do nothing with a sprain or fracture for designated period and the following of such advice or removal of a simple disablement by efficient self treatment. *Leville v. U. S.*, C.C.A.Cal.1947, 163 F.2d 296.

"Cure", as used with reference to a seaman's right to maintenance and cure, does not mean a positive care, but means care in the sense of necessary medical and nursing attention for a reasonable time. *Mulse v. Abbott*, C.C.A.Mass.1947, 160 F.2d 590.

The "cure" required of shipowner is care, including nursing and medical attention, during such period as shipowner's duty continues. *Vitco v. Joncich*, D.C.Cal.1955, 130 F.Supp. 945, affirmed 234 F.2d 161.

"Cure" of an injured seaman is proper care or medical treatment and assistance at the expense of the shipowner. *La Fontaine v. The G. M. McAllister*, D.C.N.Y.1951, 101 F.Supp. 826.

Under rule that vessel and owner must provide maintenance and cure for seaman injured or falling ill while in service, "cure" is used in its original meaning of "care", and means proper care of injured seaman by ordinary medical means, extending for a reasonable time. *Bailey v. City of New York*, D.C.N.Y. 1944, 55 F.Supp. 699, affirmed 153 F.2d 427.

Under admiralty law, vessel and her owner must furnish a member of crew maintenance and "cure" which means care, including nursing and hospitalization during such time as duty continues. *Premeaux v. Socony-Vacuum Oil Co.*, 1946, 192 S.W.2d 138, 144 Tex. 558.

50. Seaman

Generally the criteria for determining whether or not an employee is a "seaman" for purposes of maintenance and cure are the same as those governing his rights to recover under the Jones Act, section 688 of this title, and if an employee is a seaman for those purposes he is by the same token a master or member of a crew of any vessel within the Longshoremen's and Harbor Workers' Compensation Act, section 903(a) (1) of Title 33. *Weiss v. Central R. Co. of N. J.*, C.A.N.Y.1956, 235 F.2d 309.

Although plaintiff was employed aboard ferryboats only short period of time, during that period he slept and ate most of his meals ashore, he was paid an hourly wage for an eight-hour day, he was employed for part of the time on jobs ashore, he was working on an extra man rather than on a regular basis, and he had no seaman's papers, where ferryboats during such employment engaged in continuous navigation involving carrying passengers and vehicles and plaintiff operated wheel of vessel and received instruction in navigating across river, plaintiff was a seaman entitled to maintenance and cure. *Id.*

A steamship in the transatlantic merchant service during the war did not cease to be a merchantman, nor its crew, merchant seamen, with the right to maintenance and care in case of injury, because the vessel carried an armament of two guns, manned by a naval crew, for protection against submarines. *Saunders v. Luckenbach Co.*, D.C.N.Y. 1919, 262 F. 845, affirmed 262 F. 849.

Wireless telegraph operator, hired and paid by telegraph company and furnished to vessel with apparatus, was member of the crew, and as seaman entitled to maintenance and care when he became ill. *The Buena Ventura*, D.C. Mass.1917, 243 F. 797.

Woman, who was cook on vessels of barge line, including vessel upon which she was working at time of her injury, was seawoman and member of the crew. *Haycraft v. The Java Sea*, D.C.Ky.1956, 143 F.Supp. 303.

As regards right to maintenance and cure conferred upon seaman by general maritime law, the term "seaman" is not limited to those who can "hand, reef, and steer" but may extend even to persons employed as entertainers on board vessel. *McAfoos v. Canadian Pac. Steamships, Limited*, D.C.N.Y.1956, 143 F.Supp. 73, reversed on other grounds 243 F.2d 270.

An engineer on city-owned ferry boats, who was a civil service employee working eight hours a day, six days a week, boarding and living at home, and who could not be discharged except in accordance with civil service rules, was a "seaman" entitled to maintenance and cure for injuries or illness. *Bailey v. City of New York*, D.C.N.Y.1944, 55 F. Supp. 699, affirmed 153 F.2d 427.

Evidence showed that one filing libel against steamship for cure and maintenance was not member of crew nor employed as cook thereon at stated wages, as libel averred. *The San Antonio*, D.C. Pa.1932, 1 F.Supp. 221.

Where a plaintiff who was employed aboard defendant's vessel and who was injured in service of vessel while vessel was in dry dock had completed a voyage aboard vessel and had remained in same capacity at defendant's request, plaintiff was a "seaman" within section 713 of this title declaring person employed or engaged to serve in any capacity aboard vessel to be a "seaman", notwithstanding plaintiff had not signed articles, and plaintiff was not deprived of right to maintenance as not being a "seaman". *Renick v. American Export Lines*, Mun.Ct.1953, 120 N.Y.S.2d 163.

51. Independent contractor, employee of

The liability of a vessel and her owner for maintenance and cure does not extend to persons employed by independent contractor to perform work on vessel while in port. *Calvino v. Farley*, D.C.N.Y.1938, 22 F.Supp. 654.

52. Rules governing—Generally

The nature and foundations of shipowner's liability for maintenance and cure require that it be not narrowly confined or whittled down by restrictive and artificial distinctions defeating its broad and beneficial purposes. *Aguilar v. Standard Oil Co. of New Jersey*, N.Y. 1943, 63 S.Ct. 930, 318 U.S. 724, 87 L.Ed. 1107.

A shipowner's responsibility for maintenance and cure extends beyond injuries sustained because of, or while engaged in, activities required by seamen's employment. *Id.*

Where a seaman becomes committed to the service of a ship, the maritime law annexes a duty that no private agreement is competent to abrogate, and the ship is committed to maintenance and cure of seaman for illness or injury during period of voyage and in some cases for a period thereafter. *De Zon v. American President Lines*, Cal.1943, 63 S.Ct. 814, 318 U.S. 660, 87 L.Ed. 1265, rehearing denied 63 S.Ct. 1025, 319 U.S. 780, 87 L.Ed. 1725.

In applying the maintenance and cure rule, seamen, as wards of admiralty, should be the beneficiaries of a liberal attitude in consonance with dictates of sound maritime policy. *Luth v. Palmer Shipping Corp.*, C.A.Pa.1954, 210 F.2d 224, certiorari denied 74 S.Ct. 788, 347 U.S. 970, 98 L.Ed. 1116.

Breach of a shipowner's duty to a seaman is not an element in an action for maintenance and cure, but it is the primary element in an action for damages. *Paul v. U. S.*, C.A.Pa.1953, 205 F. 2d 38, certiorari denied 74 S.Ct. 140, 346 U.S. 888, 98 L.Ed. 392.

A seaman who falls sick or is injured and must be removed or is kept from his vessel is entitled to maintenance and cure as well as to his wages. *Jones v. Waterman S. S. Corp.*, C.C.A.Pa.1946, 155 F.2d 992.

Duty of vessel and owner to provide "maintenance and cure" for seamen is not restricted to those cases where seaman's employment is the cause of the injury or illness, and awards of maintenance and cure are not made as compensation. *Inter Ocean S. S. Co. v. Behrendsen*, C.C.A.Ohio 1942, 128 F.2d 506.

The obligation of an employer under maritime law of "maintenance and cure" really means maintenance and care. *Loverich v. Warner Co.*, C.C.A.Pa.1941, 118 F.2d 690. See, also, *Murphy v. American Barge Line Co.*, C.C.A.Pa.1948, 169

Note 52

F.2d 61, certiorari denied 69 S.Ct. 133, 335 U.S. 859, 93 L.Ed. 406.

Seaman accidentally injured is entitled under old admiralty rules to no more than ordinary maintenance and cure, unless injuries resulted from unseaworthiness of vessel. *The Ball Brothers*, D.C.N.Y.1929, 35 F.2d 281.

Duty to provide maintenance and cure for seaman falling sick or injured in service of ship is obligation in addition to mere wages and keep during term of employment, and is incident to contract of service, may extend beyond termination of voyage, includes care, nursing, and medical attention, and rests upon seaman's need, not upon negligence or culpability of anyone. *Fuentes v. Panama Canal Co.*, D.C.N.Y.1956, 146 F.Supp. 303.

The elements of both maintenance and cure are inseparable and both must run concurrently, if one is contingent on the existence of the other. *Haywood v. Jones & Laughlin Steel Corp.*, D.C.Pa. 1952, 107 F.Supp. 108.

Obligation of shipowner to furnish maintenance and cure arises out of relationship of shipowner and seaman and may be characterized as liability without fault, and is not limited to injuries sustained because of or while engaged in activities required by employment, but may extend to maintenance and cure for injuries incurred while seaman is off ship on his own business on shore leave. *Paul v. U. S.*, D.C.Pa.1951, 101 F.Supp. 89, affirmed 205 F.2d 38, certiorari denied 74 S.Ct. 140, 346 U.S. 838, 98 L.Ed. 392.

In determining whether a seaman is entitled to damages for aggravation of his illness resulting from failure to provide maintenance and cure, rules which govern and control must be determined, not from the municipal law, but by the maritime law which furnishes entirely different principles on many subjects from the common law. *Sims v. U. S. War Shipping Administration*, D.C.Pa. 1950, 91 F.Supp. 90, reversed on other grounds 186 F.2d 972, certiorari denied 72 S.Ct. 31, 342 U.S. 816, 96 L.Ed. 617.

The fact that ship was temporarily idle, awaiting repairs, when seaman was injured, is insufficient to disqualify seaman employed aboard ship from claiming maintenance and cure. *Sperbeck v. A. L. Burbank & Co.*, D.C.N.Y.1950, 88 F.Supp. 623, affirmed 190 F.2d 449.

Each libel by a seaman for an allowance of maintenance and cure for aggravation of existing physical condition as

result of an accident, is to be decided on its own established facts. *Bekin v. U. S.*, D.C.N.Y.1949, 85 F.Supp. 907.

The duty to provide maintenance and cure is imposed by law on relationship of the seaman to the vessel, arising from contract of parties, and liability exists without regard as to whether seaman's employment or regular duties are cause of illness or injury and irrespective of any culpability or negligence on part of shipowner, and such duty lasts as long as seaman's need continues. *Ziegler v. Marine Transport Lines*, D.C.Pa.1947, 73 F.Supp. 216.

Legislation concerning seamen's injuries and for maintenance and cure will be construed with extreme liberality in favor of seaman. *Danstrup v. The Richmond P. Hobson*, D.C.N.Y.1953, 12 F.Supp. 851.

The expense of caring for a sick seaman in the course of the voyage is a charge on the ship by the maritime law; and in this charge are included not only medicines and medical advice, but nursing, diet, and lodging, if the seaman be carried ashore. *Harden v. Gordon*, C.C. Me.1823, 2 Mason 541, Fed.Cas.No.6,047.

This section has not changed the maritime law, except so far as respects medicines and medical advice, when there is a proper medicine chest with medical directions on board the vessel and charges of nursing and lodging are not affected by this section. *Id.*

An injured seaman suing for maintenance and cure was not entitled to special consideration of the court in construing his petition on ground that case involved maritime law and special position of seaman as ward of admiralty court. *Socony-Vacuum Oil Co. v. Aderhold*, 1951, 240 S.W.2d 751, 150 Tex. 292.

A vessel owner's duty to furnish maintenance and cure to a member of crew arises out of contract and does not rest on negligence or culpability of master and is not restricted to cases where seaman's employment is cause of injury, and where seaman is injured or becomes ill during voyage, employer owes seaman duty to furnish reasonable care, including nursing and hospitalization during the voyage and for reasonable time thereafter, at least until it becomes apparent that injury or illness could not be further benefited by the treatment. *Premeaux v. Socony-Vacuum Oil Co.*, 1946, 192 S.W.2d 138, 144 Tex. 558.

53. — Status, predication upon

The duty of an employer to make provision for maintenance and cure of sea-

man falling ill or injured during service is imposed by law and is annexed as an inseparable incident to the relation of the parties. *Loverich v. Warner Co.*, C.C.A.Pa.1941, 118 F.2d 690.

Relation of seaman to vessel creates personal indenture, establishing rights for maintenance and cure in case of injury. *The Montezuma*, C.C.A.N.Y.1927, 19 F.2d 355.

Obligation to pay maintenance arises from attachment of seaman to the ship, or, in other words, from performance. *Hazelton v. Luckenbach S. S. Co.*, D.C.Mass.1955, 134 F.Supp. 525.

The right to maintenance and cure is inherent in status of seamen. *Warren v. U. S.*, D.C.N.Y.1948, 76 F.Supp. 735.

54. — Contractual right

Seaman's right to maintenance and cure is a contractual right attached as an incident to, and having its origin in, seaman's contract of employment. *Turner v. Wilson Line of Mass., Inc.*, C.A.Mass.1957, 242 F.2d 414. See, also, *Doucette v. Vincent*, C.A.Mass.1952, 194 F.2d 834.

Right to maintenance and cure lies on the border line between "contract" and "quasi contract" status and it is sufficiently "contractual" so that seaman has the equivalent of so-called "duty" to mitigate damages. *Wilson v. U. S.*, C.A.N.Y.1956, 229 F.2d 277.

A ship owner's obligation for maintenance and cure of injured or ill crew member is not contractual, but annexed by law to employment as inseparable incident thereof, regardless of any expression of parties' will, so that usual rules of damages for breaches of contract to pay money are inapplicable in determining extent of such obligation. *Sims v. U. S. of America War Shipping Administration*, C.A.Pa.1951, 186 F.2d 972, certiorari denied 72 S.Ct. 31, 342 U.S. 816, 96 L.Ed. 617.

Where owner charters fishing vessel to another with knowledge of fisherman employed thereon under arrangement that owner, charterer and fisherman shall each receive a one-third share, owner is not liable for maintenance and cure for injuries sustained by fisherman while in vessel's employ, since no relation of contract or otherwise exists between owner and fisherman. *Callan v. Cope*, C.C.A.Cal.1948, 165 F.2d 703.

Where shipping articles provided that seamen engaged under contract should receive medical and surgical attendance and necessities, it was vessel owner's du-

ty to furnish medicines, medical attention, and hospital service when necessary. *Wiley v. Alaska Packers' Ass'n*, C.C.A.Cal.1927, 18 F.2d 8.

Right to maintenance and cure is conferred by general maritime law and is contractual in sense that it has its origin in, and is an incident to, contract of employment. *McAfoos v. Canadian Pac. Steamships, Limited*, D.C.N.Y.1956, 143 F.Supp. 73, reversed on other grounds 243 F.2d 270.

A claim for maintenance and cure by a seaman is an ordinary contract claim arising out of an implied obligation of the seaman's contract of employment and the ordinary rules of contract law with respect to mitigation of damages apply, and a seaman seeking maintenance and cure can only recover for such periods as in due diligence he could not avoid. *Dobbs v. Lykes Bros. S. S. Co.*, D.C.La.1956, 140 F.Supp. 732, affirmed 243 F.2d 55.

The obligation of a shipowner to furnish cure and maintenance to his seaman who falls ill or is injured while in the service of the vessel is imposed by maritime law as an incident to the contract of employment. *Vitco v. Joncich*, D.C.Cal.1955, 130 F.Supp. 945, affirmed 234 F.2d 161.

Obligation of an employer under maritime law to provide maintenance and cure is a contractual obligation. *Miller v. Standard Oil Co.*, D.C.Ill.1952, 104 F.Supp. 946, affirmed 199 F.2d 457, certiorari denied 73 S.Ct. 836, 345 U.S. 945, 97 L.Ed. 1370, rehearing denied 73 S.Ct. 1113, 345 U.S. 971, 97 L.Ed. 1388.

It is not a prerequisite to right of seaman to maintenance and cure that he has signed articles. *Hunt v. The Trawler Brighton, Inc.*, D.C.Mass.1952, 102 F.Supp. 300.

Shipowner is bound to provide proper medical treatment and attendance for seamen falling ill or suffering injury in the service of the ship and such duty is annexed by law as an inseparable incident without any expression of the will of the contracting parties. *Ladjimi v. Pacific Far East Line*, D.C.Cal.1951, 97 F.Supp. 174.

Seaman's right to recover wages, maintenance and cure arises ex contractu, the obligation of the owner or operator being a material ingredient in compensation for labor and services of seaman. *Warren v. U. S.*, D.C.Mass.1948, 75 F.Supp. 836.

A shipowner's liability to an injured crew member for maintenance and cure

Note 54

is an obligation under a contract implied in law. *Muise v. Abbott*, D.C. Mass.1945, 60 F.Supp. 561, affirmed 160 F.2d 590.

The origin of maintenance and cure is contractual in nature and is imposed as a duty annexed to the employment. *McCormick v. Moore-McCormack Lines*, D.C.Pa.1943, 54 F.Supp. 399.

The basis of a libel for maintenance and cure is not merely the personal contract between operator of vessel and seaman, but the relationship of the seaman to his vessel. *The Edward Peirce*, D.C.N.Y.1939, 28 F.Supp. 637.

A ship's articles constitute a contract between the seamen and the ship for wages, maintenance, and cure for illness during the voyage, and, after entering upon the voyage, the seaman is entitled as of course during the voyage to maintenance, cure for illness, and wages for the trip. *The Progress*, D.C.Wash.1938, 21 F.Supp. 572.

Shipowner's duty to pay maintenance to injured seaman arises under the employment contract from seaman's disability. *Socony-Vacuum Oil Co., Inc. v. Aderhold*, 1951, 240 S.W.2d 751, 150 Tex. 292.

Employer's contract was not to cure seaman who contracted tuberculosis during voyage, but was to provide means of cure. *Socony-Vacuum Oil Co. v. Premaux*, Tex.Civ.App.1945, 187 S.W.2d 690, affirmed in part and reversed in part on other grounds 192 S.W.2d 138, 144 Tex. 558.

Employer's implied contract to provide seaman who contracted tuberculosis on voyage means of care is met by exercise of such care and judgment as the circumstances require. *Id.*

55. — Compensation

The maritime right of seaman taken ill during voyage to receive maintenance and cure exists regardless of whether the compensation contracted for consists in specific money wages, or in a lay or share of the catch or a share of the earnings of the vessel. *Vitco v. Joncich*, D.C. Cal.1955, 130 F.Supp. 945, affirmed 234 F.2d 161.

56. — Insurer

A shipowner is not an insurer of the health of seamen and their sicknesses not caused by their employment do not create any liability of the shipowner beyond the providing of maintenance and cure. *Muruaga v. U. S.*, C.A.N.Y.1949, 172 F.2d 318.

"The duty to cure, of course, does not mean that the ship becomes an insurer; it means, as laid down by the Circuit Court of Appeals for the Third Circuit in *The Mars*, Pa.1906, 149 F. 729, 731, 79 C.C.A. 435, 437, 'proper care of the injured seaman and not a positive cure which may be impossible.' This duty has also been limited by the words, 'at least as far as the ordinary medical means extend.' *The Kenilworth*, Pa.1906, 144 F. 376, 75 C.C.A. 314, 4 L.R.A., N.S., 49, 7 Ann.Cas. 202. Also, the ordinary medical assistance and treatment in cases of injury and acute diseases for a reasonable time. *The W. L. White*, D.C.N. Y.1885, 25 F. 503." *The Pochasset*, C.C. A.R.I.1924, 295 F. 6.

A shipowner is not an insurer of the safety of the seaman and is not liable for any defects or insufficiencies not attributable to negligence. *Cadle v. U. S.*, D.C.Cal.1946, 65 F.Supp. 288.

57. — Contract or tort

Liability of vessel and her owners for maintenance and cure of sick or injured seamen is implied provision of marine employment contracts and not predicated on fault or negligence of shipowner, who is liable for expense of curing seaman's injury or sickness as incident of marine employer-employee relationship, regardless of whether owner is responsible for injury or sickness. *Couts v. Erickson*, C.A.Fla.1957, 241 F.2d 499.

Under admiralty law negligence is not an element of cure and maintenance, since obligation to supply them arises out of contract. *Mullen v. Fitz Simons & Connell Dredge & Dock Co.*, C.A.Ill. 1951, 191 F.2d 82, certiorari denied 72 S.Ct. 173, 342 U.S. 888, 96 L.Ed. 666.

A seaman's right to maintenance and cure arises from contract of employment rather than any culpability or legal fault of owner or master of vessel and is independent and cumulative of right to indemnity or compensatory damages for an injury caused by negligence. *Muise v. Abbott*, C.C.A.Mass.1947, 160 F.2d 590.

The right to maintenance, cure and wages of seaman is a contractual obligation arising out of nature of employment, and any claim on this account is independent of any right of indemnity under section 688 of this title. *Runyan v. Great Lakes Dredge & Dock Co.*, C. A.Ohio 1944, 141 F.2d 896.

The duty to provide maintenance and cure for a seaman falling sick or injured in the service of his ship is an obligation in addition to mere wages and keep during the term of employment, it

is an incident to the contract of service, may extend beyond the termination of the voyage, includes care, nursing, and medical attention, and rests upon the seaman's need, not upon the negligence or culpability of any one. *Smith v. Lykes Brothers-Ripley S. S. Co., C.C.A. La.1939, 105 F.2d 604, certiorari denied 60 S.Ct. 141, 308 U.S. 604, 84 L.Ed. 505.*

Shipowner's liability for maintenance and cure is not predicated on fault or negligence, but rather on contractual basis. *Gomes v. Eastern Gas & Fuel Associates, D.C.Mass.1954, 127 F.Supp. 435.*

Liability of shipowner for maintenance and cure of seamen who become ill or are injured during period of their service is recognized as an implied provision in contracts of marine employment and such liability is not predicated on fault or negligence of shipowner. *McLeod v. Union Barge Line Co., D.C.Pa.1952, 107 F. Supp. 371, affirmed 204 F.2d 687.*

Seaman's remedy of maintenance and cure under maritime law partakes as much of character of tort as of contract. *Warren v. U. S., D.C.N.Y.1948, 76 F.Supp. 735.*

Recovery for maintenance and cure by seaman who becomes sick in service of vessel arises out of contract of employment and is not predicated on negligence. *Vincent v. Ann Arbor R. Co., D. C.N.Y.1947, 73 F.Supp. 729.*

The duty of vessel and her owner to provide maintenance and cure for seaman injured or falling ill while in service arises from contract of employment, and does not rest on negligence of master or owner, and is not restricted to those cases where seaman's employment is cause of injury or illness. *Bailey v. City of New York, D.C.N.Y.1944, 55 F. Supp. 699, affirmed 153 F.2d 427.*

58. — Negligence

A shipowner's liability for maintenance and cure is not predicated on fault or negligence. *Aguilar v. Standard Oil Co. of New Jersey, N.Y.1943, 63 S.Ct. 930, 318 U.S. 724, 87 L.Ed. 1107.* See, also, *Higgins v. De La Rama S. S. Co., Sup.1948, 85 N.Y.S.2d 257.*

That shipowner might not be liable in damages to seaman injured through dock owner's negligence does not relieve shipowner of duty of maintenance and cure. *Aguilar v. Standard Oil Co. of New Jersey, N.Y.1943, 63 S.Ct. 930, 318 U.S. 724, 87 L.Ed. 1107.*

The duty of ship to provide maintenance and cure of seaman for illness or injury during period of voyage does not

depend on fault, and it is no merely formal obligation, and it admits of no merely perfunctory discharge. *De Zon v. American President Lines, Cal.1943, 63 S.Ct. 814, 318 U.S. 660, 87 L.Ed. 1063, rehearing denied 63 S.Ct. 1025, 319 U.S. 780, 87 L.Ed. 1725.*

Deck hand's count for maintenance and cure under the general maritime law did not require proof of negligence. *Bay State Dredging & Contracting Co. v. Porter, C.C.A.Mass.1946, 153 F.2d 827.*

If seaman acquired malignancy in throat while employed as a seaman, duty of maintenance and cure arose even though it was not caused by anything incidental to the seaman's work. *Love-rich v. Warner Co., C.C.A.Pa.1941, 118 F. 2d 690.*

Seaman is entitled to maintenance and cure in addition to wages, regardless of whether injuries were due to negligence or accident. *Stevens v. R. O'Brien & Co., C.C.A.Mass.1933, 62 F.2d 632.*

A seaman is entitled to maintenance and care where sick or injured, and if the ship is negligent in her duty in this respect, she and her owner are liable in damages. *Unica v. U. S., D.C.Ala.1923, 287 F. 177.*

Seaman injured in service of ship is entitled to maintenance and cure, and wages, at least to end of voyage, irrespective of question of negligence. *Sorensen v. Alaska S. S. Co., D.C.Wash.1917, 243 F. 280, affirmed 247 F. 294.*

Seaman's action based on failure to furnish proper medical treatment was independent of his cause of action for maintenance and cure, and whereas the first cause of action was based upon negligence of employer, the claim for maintenance and cure, while also arising from employer-employee relationship, was based upon entirely different concept and was not dependent upon fault or negligence. *Desmond v. U. S., D.C.N. Y.1952, 105 F.Supp. 9, affirmed in part and reversed in part on other grounds 217 F.2d 948, certiorari denied 75 S.Ct. 600, 349 U.S. 911, 99 L.Ed. 1246.*

An action for maintenance and cure is not dependent upon negligence of vessel owner, and upon proof of injury in course of employment, right accrues to maintenance and cure until fullest measure of recovery possible under circumstances has been obtained. *Reabe v. Carnegie-Illinois Steel Corp., D.C.Pa.1951, 100 F.Supp. 728.*

In libel against the United States for maintenance, wages and damages on ac-

Note 58

count of syphilis contracted by libelant while employed as a seaman on vessel owned and operated by respondent, evidence established that respondent was negligent in allowing a wiper in engine department, known to be suffering from syphilis in primary and secondary stages, to remain on board vessel, using the same mess room, eating utensils, toilet facilities and recreational facilities as other members of the crew and in not isolating diseased wiper. *Flynn v. U. S.*, D.C.N.Y.1951, 98 F.Supp. 991.

The duty of ship to provide maintenance and cure of seamen for illness or injury during period of voyage does not depend on fault and it is no merely formal obligation and it admits of no merely perfunctory discharge. *Ladjimi v. Pacific Far East Line*, D.C.Cal.1951, 97 F.Supp. 174.

A seaman's right to recovery from employer must be based on either negligence or unseaworthiness of a vessel or its appliances. *Cadle v. U. S.*, D.C.Cal. 1946, 65 F.Supp. 288.

The right of a seaman who suffered personal injuries while in the employ of a steamship to recover maintenance and cure did not depend upon proof of negligence on the part of ship owner. *Berglann v. The Winona*, D.C.Or.1942, 46 F. Supp. 483.

By general maritime law, a vessel and her owner are bound to provide maintenance and cure to seaman falling sick or sustaining injury in service of vessel, irrespective of negligence. *Calvino v. Farley*, D.C.N.Y.1938, 23 F.Supp. 654.

Irrespective of shipowner's negligence, injured seaman was entitled to maintenance and cure, deficiency in which was recoverable on libel under general maritime law for personal injuries. *Kahyis v. Arundel Corporation*, D.C.Md.1933, 3 F. Supp. 492.

Liability of ship to seaman for cure and maintenance is apart from all consideration of negligence. *The Quaker City*, D.C.Pa.1931, 1 F.Supp. 840.

The liability imposed by admiralty law upon ship owners for maintenance and cure, including wages of seaman who becomes ill or injured during the period of his service, is not predicated upon the fault or negligence of ship owner, and negligence, or acts short of culpable misconduct of seaman will not prevent recovery. *Occidental Indemnity Co. v. Industrial Accident Commission*, 1944, 149 P.2d 841, 24 Cal.2d 310.

59. — Negligence and relation to section 688

Under section 688 of this title, the employer could not escape liability to seaman for negligence of ship's physician on theory that medical service was the seaman's and the physician's business, and the treatment not in pursuance of the physician's duty to the ship or the ship's duty to the seaman. *De Zon v. American President Lines*, Cal.1943, 63 S. Ct. 814, 318 U.S. 660, 87 L.Ed. 1000, rehearing denied 63 S.Ct. 1025, 319 U.S. 780, 87 L.Ed. 1725.

The legislative policy embodied in section 688 of this title of compensating only on basis of proven fault could not be circumvented by reading into that section a theory that ship's physician who undertakes treatment of seaman guarantees cure. *Id.*

Seaman was not precluded from maintaining libel in admiralty for maintenance and cure by the pendency in state court of his suit under section 688 of this title for injuries sustained while in the employ of libeled steamship, wherein he sought general damages, including loss of wages over and above board and room, since maintenance and cure were not included in recovery sought in state court and hence there was no "splitting of a cause of action". *Berglann v. The Winona*, D.C.Or.1942, 46 F.Supp. 483.

60. — Causation

Where seamen were expected to ascend and descend between top of tank and deck, on tanker, a distance of three feet, but use of narrow cleats attached to side of tank, with no handholds or rail provided, structure was unseaworthy and its unseaworthiness was proximate cause of injuries to seaman who slipped when so descending. *Campbell v. Tidewater Associated Oil Co.*, D.C.N.Y.1956, 141 F. Supp. 431.

Where illness has not manifested itself until after seaman has left the ship, ordinarily there can be no recovery of maintenance and cure, at least unless there is convincing proof of causal connection between disability and the service of the ship. *Brahms v. Moore-McCormack Lines*, D.C.N.Y.1955, 183 F. Supp. 283.

Where libellant and his attorney had selected competent physician, wrong diagnosis, which was given by such physician, and which psychically aggravated his injury, was part of the immediate and direct damage naturally flowing from the original injury, and, therefore,

it was not unreasonable on part of libellant to submit himself for further outpatient treatment at hospital, and libellant would be entitled to maintenance and cure on both occasions. *Wehe v. U. S.*, D.C.Pa.1955, 130 F.Supp. 768.

In seaman's suit, which sought compensation for injuries and illnesses allegedly sustained on shipboard, and which was brought under Honduran law and the general maritime law, the Jones Act, section 688 of this title, not applying, evidence established that libellant's hernia, while it occurred on shipboard, was not caused by the alleged accident, and that his permanent infirmity of chest, heart, left lung and bronchus was not caused by or aggravated by any accident on board, nor by alleged bad living conditions on board, nor by failure to treat. *Cruz v. Harkna*, D.C.N.Y.1954, 122 F.Supp. 288.

Where chambermaid during period of her employment on board respondent's motor vessel sustained a sacro-iliac sprain while moving a dresser without willful misbehavior on her part, chambermaid was entitled to recover for maintenance and cure until maximum degree of improvement from such injury was reached, but she could not recover for physical or mental condition having no causal relation to such injury. *McLeod v. Union Barge Line Co.*, D.C.Pa. 1952, 107 F.Supp. 371, affirmed 204 F.2d 687.

Seaman who entered hospital for treatment of hemorrhoids and revision of circumcision, and who while there was also operated upon for leg condition resulting from poliomyelitis in early childhood, and was given out-patient physical therapy to ankle after discharge from hospital, was not entitled to maintenance and cure from employer for the leg condition since same was not result of any injury or aggravation aboard vessel. *Capurro v. The All America*, D.C.N.Y. 1952, 106 F.Supp. 693.

A seaman, whose disability because of psychoneurosis arose or was activated while he was in United States' merchant vessel's employ, was entitled to cure and maintenance at expense of United States, and hence entitled to judgment for amount of such expense during period of his disability to extent that he could not perform his regular duties after his discharge from marine hospital, at which he received treatment without cost. *Albano v. U. S.*, D.C.Mass.1951, 98 F.Supp. 150.

Where seaman continued to work for more than a year and a half after injury

sustained while employed on one ship and was accepted by another employer as able, and no medical attention seemed necessary to him, and seaman failed to accept full benefit of medical service throughout his successive employment suit for maintenance and cure on ground that it arose out of original injury was required to be denied for want of proof of "proximate cause" and for failure to accept full benefit of medical service. *The W. H. Hoodless*, D.C.Pa.1941, 38 F. Supp. 432.

61. — Place injury occurred

A seaman has right to maintenance and cure for injuries suffered in course of his service to vessel, whether occurring on sea or on land. *O'Donnell v. Great Lakes Dredge & Dock Co.*, Ill.1943, 63 S.Ct. 488, 318 U.S. 36, 87 L.Ed. 596.

62. Service of ship, employee in

Under rule that seaman must be "in the service of a ship" to be entitled to maintenance and cure, quoted phrase means that he must be generally answerable to ship's call to duty, rather than actually in performance of routine tasks or specific orders. *Farrell v. U. S.*, N.Y. 1949, 69 S.Ct. 707, 336 U.S. 511, 93 L.Ed. 850. See, also, *Rich v. North Atlantic & Gulf S. S. Co.*, D.C.Pa.1949, 86 F.Supp. 989, amended on other grounds 86 F. Supp. 990; *Hunt v. Trawler Brighton, Inc.*, D.C.Mass.1952, 102 F.Supp. 800.

A shipowner's responsibility for maintenance and cure extends beyond injuries sustained because of, or while engaged in, activities required by seaman's employment. *Aguilar v. Standard Oil Co. of New Jersey*, N.Y.1943, 63 S.Ct. 930, 318 U.S. 724, 87 L.Ed. 1107.

A shipowner's liability for maintenance and cure covers all injuries and ailments incurred without misconduct on seaman's part amounting to ground for forfeiture, at least while he is on his ship, subject to call of duty as a seaman and earning wages as such. *Id.*

The maritime law permitted recovery of maintenance and cure, ordinarily measured by wages and cost of reasonable medical care, if seaman was injured or disabled in course of employment. *O'Donnell v. Great Lakes Dredge & Dock Co.*, Ill.1943, 63 S.Ct. 488, 318 U.S. 36, 87 L.Ed. 596.

The obligation to pay maintenance and cure extends to a seaman disabled in the service of the ship no matter what the cause. *Koslusky v. U. S.*, C.A.N.Y.1953, 208 F.2d 957.

Seaman who became ill from amoebic dysentery while he was in vessel's service, was entitled to maintenance and cure whether he contracted the disease in the service of the vessel or not. *Spahn v. U. S.*, C.A.Va.1949, 171 F.2d 980.

A sailor has right in admiralty to maintenance and cure for injuries received in course of his employment. *The Betsy Ross*, C.C.A.Cal.1944, 145 F.2d 688.

The phrase, "in the service of the ship", within rule that shipowners must care for seaman injured in such service to extent of his maintenance, cure, and wages, does not extend obligation of ship or its owners to injuries received by seaman while engaged in his personal affairs. *Jackson v. Pittsburgh S. S. Co.*, C.C.A.Ohio 1942, 131 F.2d 668.

In action in admiralty by seaman for maintenance and cure, evidence was sufficient to support conclusion that seaman's illness arose during his employment by respondent employer, but not that it was caused by such employment. *Loverich v. Warner Co.*, C.C.A.Pa.1941, 118 F.2d 690.

Vessel is liable for seaman's maintenance and cure and wages only if seaman falls sick or is wounded in service of ship; injury received in friendly scuffle was not in service of ship. *Meyer v. Dollar S. S. Line*, C.C.A.Wash.1931, 49 F.2d 1002.

Where seaman was injured in his employment, his employer would be liable if he neglected and refused to furnish the seaman maintenance and cure. *Bonam v. Southern Menhaden Corporation*, D.C.Fla.1922, 284 F. 360.

A seaman is within the rule that he is entitled to maintenance and cure if he is injured or falls sick in the service, if when that happens he is acting and receiving wages as a seaman, although the injury or illness does not result directly from the service. *The Bouker No. 2*, N.Y.1917, 241 F. 831, 154 C.C.A. 533, certiorari denied 38 S.Ct. 9, 245 U.S. 647, 62 L.Ed. 529.

A seaman is entitled to care and maintenance at expense of vessel in whose service he was injured. *Donovan v. Esso Shipping Co.*, D.C.N.J.1937, 152 F. Supp. 347.

Where seaman had been engaged as a cook by the master acting in behalf of vessel owner, seaman became entitled to maintenance and cure because of injuries sustained on vessel. *Olsen v. The Patricia Ann*, D.C.N.Y.1957, 152 F.Supp. 315.

A seaman becoming sick or disabled in the service of his vessel is entitled to be maintained and cured at the shipowner's expense. *Dobbs v. Lykes Bros. S. S. Co.*, D.C.La.1956, 140 F.Supp. 732, affirmed 243 F.2d 55.

In action by seaman against merchant vessel owner for maintenance and cure, evidence established that seaman had sustained hernia in his service on vessel, even though he had not made report of such occurrence to his superior officers. *Gardner v. Sinclair Refining Co.*, D.C.Pa. 1955, 129 F.Supp. 225, affirmed 227 F.2d 958.

Where employee of towing company was injured while working on company's barge, whether physical and mental condition was entirely due to accident or was aggravation of previously existing dormant condition, he was entitled to recover maintenance and cure. *Benton v. United Towing Co.*, D.C.Cal.1954, 120 F. Supp. 638, affirmed 224 F.2d 558.

A seaman is entitled to maintenance and cure when he incurs injury in the service of his ship. *Mormino v. Leon Hess, Inc.*, D.C.N.Y.1953, 119 F.Supp. 314, affirmed 210 F.2d 831.

The right of a seaman to maintenance and cure is construed with great liberality, and is not restricted to cases where the seaman's employment is the cause of the injury or illness, but he must, at time he incurs the injury or illness, be in the service of the ship in the sense of being generally answerable to its call to duty. *Danstrup v. The Richmond P. Hobson*, D.C.N.Y.1954, 118 F.Supp. 453.

The phrase "in service of the ship" as used in rule that seaman injured "in service of the ship" is entitled to wages and maintenance and cure means that seaman must generally be answerable to call of duty rather than at time of injury he was in actual performance of routine tasks or engaging in activities pursuant to specific orders. *Keefe v. American Pac. S. S. Co.*, D.C.Cal.1953, 110 F.Supp. 853.

The duty of shipowner to furnish maintenance and cure exists in seaman's home port as well as in a foreign port if he is in the service of the ship at the time he falls ill or is injured and his injury is not due to his wilful act, default or misbehaviour. *Lawler v. Matson Nav. Co.*, D.C.Cal.1952, 108 F.Supp. 946, affirmed 217 F.2d 645, certiorari denied 75 S.Ct. 601, 349 U.S. 912, 99 L.Ed. 1247.

In action for maintenance and cure of hernia, evidence required finding that hernia for which defendant had been

hospitalized and which resulted in sixty days disability, had developed while libelant had been fishing on the respondent's vessel. *Petricich v. Devlahovich*, D.C.Cal.1952, 107 F.Supp. 871.

In chambermaid's action for maintenance, and cure, evidence established that libelant had sustained her injury in the course of her employment when struck by tow line while on quarter deck of barge after returning from shore. *Reabe v. Carnegie-Illinois Steel Corp.*, D.C.Pa.1951, 100 F.Supp. 728.

Rule that if a seaman falls sick while in service, the shipowner is responsible for maintenance and cure even though the germs of disease were in seaman's system when he joined ship, was not applicable in absence of evidence that seaman fell sick while in service of ship. *Langeland v. U. S.*, D.C.N.Y.1950, 93 F.Supp. 645.

Evidence established that disability of seaman from complications which followed emergency operation for intestinal obstruction caused by earlier splenectomy was sustained while in service of vessel and not by reason of seaman's own vice or misconduct. *Lipscomb v. Groves*, D.C.Pa.1949, 83 F.Supp. 402, affirmed 187 F.2d 40.

Seaman, injured when struck by a wave while proceeding, pursuant to orders, to forepeak in bow of vessel during heavy seas, was injured in service of vessel and not by reason of his own misconduct, so that owners and operators of vessel were liable for his maintenance and cure. *Burch v. Smith*, D.C.Pa.1948, 77 F.Supp. 6.

Chief mate who contracted tuberculosis on voyage was entitled to an award for maintenance and cure. *Smith v. U. S.*, D.C.Md.1946, 66 F.Supp. 933, affirmed 159 F.2d 247, certiorari denied 67 S.Ct. 1735, 331 U.S. 849, 91 L.Ed. 1858.

A seaman, to recover wages or earnings on fishing voyage and maintenance and cure for injury received after his engagement therefor from ship, must show that he received injury while performing labor in discharge of obligations of his employment. *The President Coolidge*, D.C.Wash.1938, 23 F.Supp. 575.

A vessel and her owners are liable for seaman's maintenance and cure and wages if seaman falls sick or is wounded in the service of the ship. *Collins v. Dollar S. S. Lines*, D.C.N.Y.1938, 23 F.Supp. 395. See, also, *The Birkenhead*, D.C.Pa.1931, 51 F.2d 117.

The phrase "in the service of the ship" within the rule that a vessel is liable for

a seaman's maintenance and cure and wages if the seaman falls sick or is wounded "in the service of the ship" is closely analogous to the phrase "in the line of duty" as applied to soldiers or sailors in the service of the United States. *Collins v. Dollar S. S. Lines*, D.C.N.Y.1938, 23 F.Supp. 395.

63. Shore duties

"When the seaman's duties carry him ashore, the shipowner's obligation is neither terminated nor narrowed. See, e. g., *Laws of Oleron*, Art. VI, VII; *Laws of Wisbuy*, Art. XVIII, XIX; *Laws of Hanse Towns*, Art. XXXIX, XLV; see also *The Montezuma*, 2 Cir., 19 F.2d 355; *Gomes v. Pereira*, D.C., 42 F.Supp. 328." *Aguilar v. Standard Oil Co. of New Jersey*, N.Y.1943, 63 S.Ct. 930, 318 U.S. 724, 87 L.Ed. 1107.

The procuring of fishing net from warehouse for fishing vessel for her forthcoming fishing venture is in maritime employment even though such seaman's services for the venture is on shore. *The Betsy Ross*, C.C.A.Cal.1944, 145 F.2d 688.

Where seaman employed on vessel engaged in fishing for tuna and sardines on a $\frac{1}{4}$ lay or share of whatever fish were taken was injured on second day of employment while taking a net from warehouse to vessel, the seaman is entitled to wages, maintenance and cure. *Id.*

Where purser, while returning from office of shipowner with proceeds of catch which had just been delivered, without fault on his part, fell on the wharf and injured his knee, an absolute right to cure and maintenance at the ship's expense attached. *Gomes v. Pereira*, D.C.Mass.1941, 42 F.Supp. 328.

64. — Shore leave

A seaman who was injured during period of relaxation while on shore leave was injured in "service of ship" so as to be entitled to maintenance and cure under *Shipowners' Liability Convention*. *Warren v. U. S.*, N.Y.1951, 71 S.Ct. 432, 340 U.S. 523, 95 L.Ed. 503.

"Between these extremes [shipowner's obligation when seaman's duties carry him ashore, and when the seaman leaves the ship contrary to orders] are the instant cases, raising for the first time here the question of the existence and scope of the shipowner's duty when the seaman is injured while on shore leave but without specific chore for the ship. Liability in that circumstance was obscured in the first maritime codes and

Note 64

although early suggested has been recognized only implicitly in lower federal courts.

"Thus while the Laws of Oleron and the Marine Ordinances of Louis XIV, supra, relieve from liability for injuries incurred while on shore without leave, they say nothing on the question here involved. Similarly, the Laws of Wisbuy, supra, are ambiguous on this point. The Laws of the Hanse Towns suggest that any injuries received otherwise than in the ship's service are not within the right to maintenance and cure." *Aguilar v. Standard Oil Co. of New Jersey*, N.Y. 1943, 63 S.Ct. 930, 318 U.S. 724, 87 L.Ed. 1107.

A seaman, who left ship on shore leave, was proceeding through pier toward street when lights were extinguished, and fell into open ditch at railroad siding could recover for maintenance, cure and wages, where seaman was traversing appropriate route to street. *Id.*

A seaman who is injured on dock or other premises which must be traversed in going from vessel to public streets on authorized shore leave or in returning to vessel from streets on such leave is entitled to maintenance and cure. *Id.*

A seaman who obtained permission to go ashore on personal business, and who, while returning, was struck by automobile on roadway on third party's premises at which ship was docked, could recover from shipowner for maintenance and cure, where it was necessary to use such premises to return to ship. *Id.*

Shore leave consisting of brief periods ashore in home or foreign ports in the course of a voyage, or perhaps even before a voyage begins or after it has terminated, is a usual, traditional, and perhaps essential incident of the employment of a seaman, and, during shore leave, seaman is "in the service of the ship" so as to be entitled to maintenance and cure. *Haskell v. Socony Mobil Oil Co.*, C.A.Mass.1956, 237 F.2d 707.

Waiter who was member of crew and who was given shore leave in his home port and who was injured in automobile accident while driving from his home and who was generally answerable to call of duty at time of his injury was entitled to maintenance and cure. *Matson Nav. Co. v. Lawler*, C.A.Cal.1954, 217 F.2d 645, certiorari denied 75 S.Ct. 801, 349 U.S. 912, 99 L.Ed. 1247.

A seaman was entitled to maintenance and cure when he was stricken unconscious while on shore leave. *German v. Carnegie-Illinois Steel Corp.*, C.A.Pa.1948, 169 F.2d 715.

That seaman was in vessel's home port, was not engaged in ship's business, and was not within immediate vicinity of ship at time of injury, was not ground for denying maintenance, cure, and wages for injuries suffered when he turned ankle while walking in driveway of friend's cottage where he had spent part of shore leave. *Smith v. U. S.*, C.C.A. Va.1948, 167 F.2d 550.

Where seaman on shore leave in foreign port is injured on diving into swimming pool, the injury is received in course of employment. *Ellis v. American Hawaiian S. S. Co.*, C.C.A.Cal.1948, 165 F.2d 999.

The liability of a shipowner for maintenance and cure extends to injuries incurred on the dock or other premises which must be traversed in going from vessel to public street or returning to vessel from street. *Kyriakos v. Goulandris*, C.C.A.N.Y.1945, 151 F.2d 132.

A seaman, injured in jump from ship's deck to dock on his own volition, in pursuit of his personal affairs, after another member of crew refused such seaman's request to place ladder over side of vessel so that he might go ashore, was not injured in "service of the ship", and hence could not recover from shipowner for cure and maintenance. *Jackson v. Pittsburgh S. S. Co.*, C.C.A.Ohio 1942, 131 F.2d 668.

"Service of ship", within meaning of the rule that a vessel and her owners are liable in case a seaman falls sick, or is wounded, in the service of the ship, to the extent of his maintenance and cure, and to his wages, is not limited to acts done for the benefit of the ship, or in the actual performance of the seaman's duty on board, but includes injuries sustained by a seaman in the immediate neighborhood while going on or leaving the ship on which he is employed. *Jones v. Waterman S. S. Corporation*, C.C.A.Pa.1942, 130 F.2d 797, affirmed 63 S.Ct. 930, 318 U.S. 724, 87 L.Ed. 1107.

Where seaman signed written articles to serve aboard vessel in capacity of oiler at certain base wages for voyage not to exceed twelve calendar months, and he entered on duty and rendered deck service while vessel was still tied to wharf, and before it left port on contemplated voyage seaman was injured while driving away from vessel in automobile on personal mission, he would be deemed to have been "in service of the vessel" at time of injury, so as to be entitled to maintenance and cure. *Keefe v. American Pac. S. S. Co.*, D.C.Cal.1953, 110 F. Supp. 853.

Seaman, who was injured when he fell into bottom of barge while getting into it to go ashore, would be entitled to maintenance and wages. *Clifford v. The Iliamna*, D.C.Cal.1952, 106 F.Supp. 36.

A seaman on shore leave is still "in service of the ship" so as to be entitled to maintenance and cure for injuries sustained during shore leave, whether shore leave is at foreign port or home port. *Hunt v. The Trawler Brighton, Inc.*, D.C.Mass.1952, 102 F.Supp. 300.

Where fisherman made three or four consecutive trips on trawler, working as deck hand and fisherman without ever having signed articles, and it was the practice among fishing vessels working out of his home port to remain tied up at dock for forty-eight hours after each trip before starting on next trip, and crew members, though subject to call, were ordinarily free to take such period as shore leave, and, on reaching home port, fisherman went on shore leave, and while on shore leave, he fell and injured his leg, he was "in service of the ship" at time of injury so as to be entitled to maintenance and cure. *Id.*

Where seaman's injury was incurred while he was taking a bus trip while on shore leave, his right to maintenance and cure was not affected by fact that injury did not occur in dock area. *Gaynor v. U. S.*, D.C.Pa.1950, 90 F.Supp. 751.

Fact that ship was underway a few days before ship officer suffered injury while ship was docked, and was underway shortly thereafter, qualified officer employed aboard ship to recover maintenance and cure, although ship was docked and was temporarily idle, awaiting repairs, when injury was incurred, and officer slept and ate ashore while ship was docked. *Sperbeck v. A. L. Burbank & Co.*, D.C.N.Y.1950, 88 F.Supp. 623, affirmed 190 F.2d 449.

A seaman was entitled to maintenance and cure from the government, as shipowner, when he fell into the water between his ship and a wharf as he was returning from shore leave. *Paul v. U. S.*, D.C.La.1943, 54 F.Supp. 60.

Where seaman was not injured in service of the ship, but while engaged on shore in purely personal pursuits, he could not recover for maintenance and cure. *Wahlgren v. Standard Oil Co. of New Jersey*, D.C.Ill.1941, 42 F.Supp. 992.

A seaman, who was injured in returning to ship after having gone ashore to exchange a pair of gloves when he somehow fell from dock with which he was not familiar while attempting to find

gang plank leading to ship in the dark during a blackout was not injured while in the "service of the ship", so as to render shipowner liable for maintenance and cure. *Lilly v. U. S. Lines Co.*, D.C.N.Y. 1941, 42 F.Supp. 214.

A seaman who was struck by motorcycle and injured while on shore leave in Africa and remained in hospital there until cured was not entitled to recover from owner for maintenance and cure, since he was not engaged in service of ship or owner when injured. *Smith v. American South African Line*, D.C.N.Y. 1941, 37 F.Supp. 262.

The rule that a vessel is liable for a seaman's maintenance and cure and wages if the seaman falls sick or is wounded in the service of the ship will be applied liberally, but should not be extended to require ship to provide maintenance and cure for seaman who is injured on shore while engaged in his personal affairs. *Collins v. Dollar S. S. Lines*, D.C.N.Y.1938, 23 F.Supp. 395.

A seaman who was injured while playing baseball while on shore leave was not entitled to maintenance and cure from owner of the ship since injury was caused by something which seaman was doing in pursuance of his private avocation and grew out of relations unconnected with the service which was not the logical incident of duty in the ship's service and hence was not "in the service of the ship." *Id.*

65. — Vacation

A seaman during a protracted vacation is not "in the service of the ship" and is not entitled to maintenance and cure. *Haskell v. Socony Mobil Oil Co.*, C.A. Mass.1956, 237 F.2d 707.

Where seaman asked for and received ten days' leave of absence, and during that time his father died and he made request of owner of vessel that he be allowed to take 46 days' vacation, which had accrued to him under collective bargaining agreement, so that he could settle up problems arising because of the death of his father, and owner of vessel granted the request, and thereafter seaman was injured in automobile accident while on a purely personal errand, the accident did not occur "in the service of the ship," and seaman was not entitled to maintenance. *Id.*

66. Voyage, termination of

As regards injured seaman's right to wages, maintenance, and cure, voyage ended under articles when vessel came

Note 67

back to final port of discharge. The Ipswich, D.C.Md.1930, 46 F.2d 136.

67. Persons entitled to sue

Hospital can recover from shipowner reasonable value of treatment furnished seaman, injured while in shipowner's service, at seaman's request, on shipowner's failure to furnish treatment. Methodist Episcopal Hospital v. Pacific Transport Co., D.C.Cal.1920, 3 F.2d 508.

A seaman is not entitled to maintenance and cure unless he can establish he underwent treatment calculated to improve his condition. Zackey v. American Export Lines, Inc., D.C.N.Y.1957, 152 F.Supp. 772.

68. Persons liable

A general agent for the management of vessel owned by the United States and operated by War Shipping Administration was neither the owner nor the owner pro hac vice nor the employer of seamen and was not liable for wages, maintenance or cure to injured seamen after passage of 50 App. former § 1291 et seq. Fink v. Shepard S. S. Co., Or.1949, 69 S.Ct. 1330, 337 U.S. 810, 93 L.Ed. 1709.

Both managing agent of United States and operator of vessel owned by United States and operated under standard form of agency agreement, would be liable for maintenance and cure of seaman suffering from an incurable disease not caused by his employment, up to time when no further improvement in his condition was to be expected. Muruaga v. U. S., C.A. N.Y.1949, 172 F.2d 318.

The United States is suable in admiralty for breach of contract to furnish maintenance and cure to civilian employee who became ill while on voyage on army transport and jurisdiction exists under the Public Vessels Act, section 781 of this title. U. S. v. Loyola, C.C.A.Cal. 1947, 161 F.2d 126.

If seaman's claim against United States as owner of vessel on which seaman suffered mental breakdown, for maintenance and cure, was subsistent during two years preceding institution of cause and had since continued, then it was enforceable claim against United States. Williams v. U. S., D.C.Va.1954, 133 F.Supp. 317, affirmed 228 F.2d 129, certiorari denied 76 S.Ct. 1054, 351 U.S. 986, 100 L.Ed. 1499, rehearing denied 77 S.Ct. 26, 352 U.S. 860, 1 L.Ed.2d 71.

General agent for management of vessel owned by the United States and operated by the war shipping administration, not being the owner or owner pro hac vice nor the employer of seaman,

was not liable for maintenance and cure to seaman who suffered a recurrence of an earlier manifestation of tuberculosis. Renner v. U. S., D.C.N.Y.1955, 132 F.Supp. 810.

Where vessel owned by United States was managed by general agent under standard form general agency agreement, if there was maintenance and cure owing to injured seaman United States was liable, and fact that it had instructed its agent to pay in no way relieved it from its obligation, nor did it enlarge rights of seaman. Rodinluc v. Isthmian S. S. Co., D.C.Pa.1950, 93 F.Supp. 658.

Where seaman suffered stomach disorders on vessel serviced by shipping company under general agency agreement with the United States through the War Shipping Administration, suit for maintenance and cure and compensatory damages brought on theory of breach of duty to seaman by furnishing him with ship which was unseaworthy, in that its refrigerator was defective and failed to prevent food from spoiling, and by negligently furnishing him with bad food and by failing to provide him with maintenance and cure after he left vessel with resulting aggravation of injuries properly lay against the United States as owner rather than against shipping company. Sims v. Sprague S. S. Co., D.C.Pa.1949, 85 F.Supp. 563.

A seaman, employed on a merchant vessel operated under a general agency agreement with the War Shipping Administration, must look to the United States for maintenance and not to the general agent shipping company. Gibson v. International Freighting Corp., D.C.Pa.1949, 85 F.Supp. 562.

Private corporation operating vessel under general agent service agreement with War Shipping Administration was "employer" of seaman on the vessel for purposes of liability for maintenance and cure independently of a suit under Jones Act, section 688 of this title. The Anna Howard Shaw, D.C.N.Y.1947, 75 F.Supp. 210, rehearing denied 76 F.Supp. 735, affirmed in part and reversed in part on other grounds 179 F.2d 919, reversed on other grounds 71 S.Ct. 432, 340 U.S. 523, 95 L.Ed. 503.

Operator of vessel as agent of the United States because owner pro hac vice and liable for maintenance and cure. McCormick v. Moore-McCormack Lines, D.C.Pa.1943, 54 F.Supp. 399.

The right of seaman under the general maritime law to maintenance and cure and his rights under the Jones Act, sec-

tion 688 of this title, to damages for injuries, caused by negligence, ordinarily exist only against the vessel and her owners. *Sanz v. Isbrandtsen Co.*, 1949, 88 N.Y.S.2d 436, 196 Misc. 390.

The fact that vessel was owned by War Shipping Administration and operated by private owner under a General Agency Agreement did not relieve the private owner of its liability to a seaman for wages, maintenance and cure for injuries sustained by the seaman on board the vessel. *Higgins v. De La Rama S. S. Co., Inc.*, Sup.1948, 85 N.Y.S.2d 257.

69. Commencement of Liability

The right of a seaman to maintenance and cure arises when he is taken ill from whatever cause during a voyage. *Haskell v. Socony Mobil Oil Co., C.A. Mass.*1956, 237 F.2d 707.

"The obligation of the ship to furnish maintenance and cure attaches to accidents which happen in the brief interval between the time a seaman is paid off and formally discharged and the subsequent time at which, in ordinary course, he actually gets physically away from her. He went on her as a seaman, and for the purpose in hand he did not cease to be one until he was safely off her." *The Michael Tracy, C.C.A.Va.*1924, 295 F.

Where evidence showed that seaman who developed active tuberculosis while on shipboard had been in active in-patient status in hospitals ever since that time, and that he would continue to be such a patient for an indefinite period, and that it was impossible presently to determine with accuracy when he would be treated on out-patient basis, claim for maintenance was premature. *Ward v. American President Lines, D.C.Cal.* 1951, 95 F.Supp. 609.

The duty to furnish maintenance and cure to injured seaman must have arisen before termination of the voyage and wage relation, and continues thereafter for a reasonable time, determinable in each case by reference to its facts. *Lynskey v. Great Lakes Transit Corporation, D.C.N.Y.*1942, 42 F.Supp. 816.

70. Suspension of Liability

Where seaman signs on a subsequent voyage, his maintenance and cure arising out of former voyage is suspended, because feeding and care of seaman is obligation of second vessel. *Socony-Vacuum Oil Co. v. Aderhold*, 1951, 240 S.W.2d 751, 150 Tex. 292.

71. Termination of Liability

Fact that seaman, who was suffering from tuberculosis, returned to Maritime School on full-time basis while he was undergoing curative treatments would not prejudice his recovery for maintenance and cure. *Bradt v. U. S., C.A.N.Y.* 1955, 221 F.2d 325.

Where seaman, for a period extending at least until date of trial, suffered residual gastritis which could have been improved by proper medical treatment and adherence to a rigid diet, and where it was undisputed that surgery would have benefited seaman's incisional hernia condition which was directly related to operations performed upon seaman while he was in employ of shipowner, award of maintenance against shipowner was properly made to date of trial. *Luth v. Palmer Shipping Corp., C.A.Pa.*1954, 210 F.2d 224, certiorari denied 74 S.Ct. 788, 347 U.S. 976, 98 L.Ed. 1116.

Where, at time of trial, seaman still had difficulty in using his right hand which might be slightly helped by treatment, and stump of left arm gave him considerable trouble and further treatments were necessary, seaman was entitled to maintenance and cure to date of claim. *Shields v. U. S., C.A.Pa.*1949, 175 F.2d 743, certiorari denied 70 S.Ct. 249, 338 U.S. 899, 94 L.Ed. 553.

A seaman was entitled to maintenance and cure for the time within which he required periodic post-operative out-patient treatments, where he was unable to return to work during such time. *Lindquist v. Dilkes, C.C.A.Pa.*1942, 127 F.2d 21.

Shipowner's duty to furnish maintenance to injured seaman is coextensive in time with duty to furnish care. *Skolar v. Lehigh Valley R. Co., C.C.A.N.Y.* 1932, 60 F.2d 893.

A shipowner is required to furnish disabled seaman medical care and maintenance, including board and lodging, until seaman is cured, disability is declared permanent, or maximum cure possible is effected. *Sobosle v. U. S. Steel Co., D.C.Pa.*1957, 151 F.Supp. 767.

Fact that seaman becomes incapacitated for work does not place burden upon employer the seaman was working for at time of becoming incapacitated to furnish maintenance and cure for seaman for the rest of his life. *Knight v. E. E. Saunders & Co., D.C.Fla.*1955, 134 F.Supp. 7, affirmed 231 F.2d 448.

If expectation and possibility of cure has ceased, right of seaman to maintenance and cure no longer continues.

Note 71

Haywood v. Jones & Laughlin Steel Corp., D.C.Pa.1952, 107 F.Supp. 108.

A merchant seaman who had served on various vessels owned and operated by the United States was entitled to maintenance from the United States for various periods of disability for sea duty during which he was not hospitalized. Kosluskv v. U. S., D.C.N.Y.1952, 106 F.Supp. 653, affirmed 208 F.2d 957.

A seaman is not entitled to payments for maintenance and cure, continuing after any given point, unless his condition is susceptible of further improvement by medical treatment. Bandy v. Keystone Shipping Co., D.C.Pa.1951, 100 F.Supp. 985.

Seaman, who was a diabetic, was not entitled to maintenance and cure for life from ship owner arising out of seaman's deprivation of insulin while a member of crew. Tribune v. U. S., D.C.Pa.1950, 95 F.Supp. 197.

When a voyage has ended, obligation of shipowner in respect to maintenance and cure due seaman continues for a reasonable time, but performance is commuted, so that it is fully met, by providing the seaman with money by which he can maintain himself and get needed medical attention, and if shipowner is ready and willing to pay, shipowner cannot reasonably be required to keep track of a seaman no longer in shipowner's employ and to see that seaman actually gets proper food and care. Sims v. U. S. War Shipping Administration, D.C.Pa.1950, 91 F.Supp. 90, reversed on other grounds 186 F.2d 972, certiorari denied 72 S.Ct. 31, 342 U.S. 816, 96 L.Ed. 617.

If, after a voyage has ended, maintenance is not paid to a seaman when owing, and seaman's illness is thereby prolonged, obligation of shipowner to pay will be extended beyond time when it otherwise could have been ended and, to that extent, seaman will be compensated for the delay. *Id.*

The obligation of owner or operator of a vessel to pay maintenance to a seaman who falls ill during course of voyage lasts until the passing of a reasonable time for medical attention even though that time is beyond end of voyage or until time when seaman is not only well, but able to find suitable employment, whichever is the shorter period. Warren v. U. S., D.C.Mass.1943, 75 F.Supp. 836.

The obligation of shipowner for maintenance and cure of injured seaman may extend beyond termination of voyage and depends upon seaman's need or until

it appears that injury cannot be benefited by further treatment. Shields v. U. S., D.C.Pa.1947, 73 F.Supp. 862, affirmed in part and reversed in part on other grounds 175 F.2d 743, certiorari denied 70 S.Ct. 249, 338 U.S. 899, 94 L.Ed. 553.

The ship is not an "insurer" of the safety of a seaman and is not obligated to provide maintenance and cure beyond a reasonable time nor for an indefinite length of time nor where a cure has been effected as nearly as possible in a particular case. The Alpha, D.C.Pa.1942, 44 F.Supp. 809. See, also, The W. H. Hoodless, D.C.Pa.1941, 38 F.Supp. 432.

Seaman who suffered disability following accident was entitled to allowance for maintenance and cure during period of disability as established by evidence. The Algic, D.C.N.Y.1934, 6 F.Supp. 906.

72. — Medieval rule

Seaman was not entitled to lifetime maintenance for permanent disability caused by fall, due to his negligence while returning to ship after overstaying shore leave in Italian port recently captured in war, under medieval rule that seamen were entitled to life maintenance for disability incurred in defending ship against enemy, corsairs, or sea rovers, but only to maintenance until the maximum cure possible was effected. Farrell v. U. S., N.Y.1949, 69 S.Ct. 707, 336 U.S. 511, 93 L.Ed. 850.

73. — Absence without leave

When seaman leaves ship contrary to orders, the owner's duty with respect to maintenance and cure is ended. "Sound reasons of discipline long have impelled this rule. Cf., e. g., Laws of Oleron, Art. VII; Marine Ordinances of Louis XIV, supra; Laws of Wisbuy, supra; and compare Pierce v. Patton, supra note 10." Aguilar v. Standard Oil Co. of New Jersey, N.Y.1943, 63 S.Ct. 930, 318 U.S. 724, 87 L.Ed. 1107.

74. — Off duty periods

The right of a seaman to maintenance and cure arises not only when the seaman is injured while actually at work on his vessel, but also when his injury occurs during off duty periods. Haskell v. Socony Mobil Oil Co., C.A.Mass.1956, 237 F.2d 707.

75. — Certainty

Seaman, who falls sick or is injured while in service, can recover an award from employer of small amounts to cover future maintenance and cure of a kind and for a period definitely ascer-

tained or ascertainable, but cannot recover a lump sum to provide for an unpredictable period of incapacity. *Campbell v. American Foreign S. S. Corporation*, C.C.A.N.Y.1941, 116 F.2d 926, certiorari denied 61 S.Ct. 959, 313 U.S. 573, 85 L.Ed. 1530.

A seaman's recovery for maintenance and cure is measured by reasonable cost needful in immediate future for maintenance and cure of kind and for period which can be definitely ascertained; this period does not extend beyond fair time in which to effect such improvement as may reasonably be expected to result from nursing and medical treatment. *Haycraft v. The Java Sea*, D.C.Ky.1956, 143 F.Supp. 303.

76. Foreseeable period

Under doctrine that admiralty courts are empowered in seaman's action for maintenance and cure to award a decree for such reasonable sums as circumstances of case indicate to cover future treatment for a foreseeable period of time, the "foreseeable period" contemplates such time as evidenced by the testimony of competent medical witnesses. *Chesser v. General Dredging Co.*, D.C.Fla.1957, 150 F.Supp. 592.

77. — Continuation of need

A seaman's wages must be restricted to the term of his employment as specified by the shipping articles, whereas the duty to provide maintenance and cure lasts as long as the seaman's need continues. *Jones v. Waterman S. S. Corp.*, C.C.A.Pa.1946, 155 F.2d 992.

78. Reasonable time

Where a seaman, absent some willful misbehavior or deliberate act of indiscretion on his part, falls sick or is injured in service of his ship, he is entitled to his wages until termination of contract of employment and to his maintenance, care, and cure during agreed term of employment and thereafter for a reasonable time, depending upon circumstances. *Muise v. Abbott*, C.C.A.Mass. 1947, 160 F.2d 590.

Where seaman's illness arose during his employment by respondent employer but the illness was not caused by such employment, the seaman was entitled to an award for maintenance and cure for a reasonable period following the term of his employment. *Loverich v. Warner Co.*, C.C.A.Pa.1941, 118 F.2d 690.

Shipowner must give injured seaman proper care for reasonable time during which treatment may be expected to ef-

fect cure. *Skolar v. Lehigh Valley R. Co.*, C.C.A.N.Y.1932, 60 F.2d 893. See, also, *The James E. Ferris*, D.C.N.Y.1932, 1 F.Supp. 1018.

The duty to "cure" which a ship owes to an injured seaman means proper medical care for a reasonable time, and not positive cure, which may be impossible. *The Pochasset*, C.C.A.R.I.1924, 295 F. 6.

The liability of a ship for the expense of caring for a seaman who is ill or injured may extend for a reasonable time beyond his term of service, when necessary to effect a cure. *The Bouker No. 2*, N.Y.1917, 241 F. 831, 154 C.C.A. 533, certiorari denied 38 S.Ct. 9, 245 U.S. 647, 62 L.Ed. 529.

Maintenance and cure must be continued sufficiently long to give injured or ill seaman proper care for reasonable time during which treatment may be expected to effect cure. *Fuentes v. Panama Canal Co.*, D.C.N.Y.1956, 146 F.Supp. 303.

Where seaman was physically injured in service of vessel and, after he left vessel but before he attained maximum cure, his pre-existing mental illness manifested itself so that he consulted psychiatrist four months after leaving vessel, seaman was entitled to maintenance and cure with respect to mental illness without showing that it was caused or aggravated by occurrences on board ship, but maintenance and cure would be only for reasonable period under circumstances and not necessarily for period necessary to reach point of maximum cure. *Brahms v. Moore-McCormack Lines*, D.C.N.Y.1955, 133 F.Supp. 283.

Where seaman was entitled to maintenance and cure for pre-existing mental illness because it manifested itself before he attained maximum cure for physical injuries, though after he had left vessel, court in fixing reasonable period for treatment would take into account elusive nature of disability, length of service for defendant, availability of treatment at Marine Hospital, and fact that seaman had well-established family, and maintenance for six month period would be allowed. *Id.*

Though back injury of seaman was apparently permanent, maintenance could be allowed only for such period of time after voyage ended as an improvement in seaman's condition might reasonably be expected from nursing, care and medical treatment. *Baun v. Hudson*, D.C.Alaska 1952, 108 F.Supp. 523.

Where a possibly incurable condition has brought about recurrent disability, seaman is entitled to maintenance and

Note 78

cure for at least a reasonable time after accident. *Bekin v. U. S.*, D.C.N.Y.1949, 85 F.Supp. 907.

Employer's liability to injured seaman for maintenance and cure did not cease upon seaman's discharge from hospital, where such discharge was premature, but continued for a reasonable time during which medical treatment might be expected to effect a cure. *Burch v. Smith*, D.C.Pa.1948, 77 F.Supp. 6.

79. — Voyage, continuation of

A vessel and her owners are liable for maintenance and cure of seaman falling sick or injured in service of vessel, at least so long as voyage is continued, whether injuries were received by negligence or accident. *Couts v. Erickson*, C.A.Fla.1957, 241 F.2d 499.

A seaman, who becomes sick or injured in the service of a ship, is entitled to maintenance, cure, and wages at least so long as the voyage is continued. *Halvorsen v. U. S.*, D.C.Wash.1922, 284 F. 285.

A vessel and her owners are liable, in case a seaman falls sick, or is wounded, in the service of the ship to extent of his maintenance and cure, and to his wages, at least so long as the voyage is continued. *Rich v. North Atlantic & Gulf S. S. Co.*, D.C.Pa.1949, 86 F.Supp. 989, amended on other grounds 86 F.Supp. 990.

A vessel and her owner are liable if seaman falls sick or is wounded in service of ship, to the extent of his maintenance and cure, and wages, at least so long as voyage is continued. *Dasher v. U. S.*, D.C.N.Y.1945, 59 F.Supp. 742.

A vessel and her owners are liable, if a seaman falls sick or is wounded in the service of the ship, to the extent of his maintenance and cure, and his wages, at least so long as the voyage is continued. *The Edward Peirce*, D.C.N.Y. 1939, 28 F.Supp. 637.

Recovery by a seaman for maintenance and cure for illness is limited to those items during the voyage. *The Progress*, D.C.Wash.1938, 21 F.Supp. 572.

80. — Voyage, after termination of

A ship owner's obligation to provide maintenance and cure for injured or ill crew member continues beyond particular voyage for which he is engaged. *Sims v. U. S. of America War Shipping Administration*, C.A.Pa.1951, 186 F.2d 972, certiorari denied 72 S.Ct. 31, 342 U.S. 816, 86 L.Ed. 617.

The right of seaman to maintenance and cure for an illness which befalls him during his service may continue for a period beyond the duration of the voyage, whether he is at home or abroad and even though the illness is not caused by the employment. *U. S. v. Robinson*, C.A. Ala.1948, 170 F.2d 578.

The right of seaman, falling ill during service, to maintenance and cure, is not restricted to those cases where the seaman's employment is the cause of the illness, and the employer's obligation may continue after the termination of the voyage in which injury is sustained or illness begins. *Loverich v. Warner Co.*, C.C.A.Pa.1941, 118 F.2d 690.

Since the right of an injured seaman to maintenance and cure is not fixed by the contract, but is one developed by the admiralty courts out of the relationship existing between the ship and the seaman, such allowance can be made for a term longer than the voyage on which he was injured. *The Cliftwood*, D.C.Ala.1922, 280 F. 726.

Where seaman's disability due to injuries sustained in employment persist so that, after reshipment on another's vessel, he is declared unfit for duty and such other vessel owner pays maintenance and cure on condition that he prosecute action against owners of vessel whereon he was injured and reimburse it for amounts that it has paid, neither such reshipment nor subsequent shore employment would preclude him from recovering such maintenance and cure from owner of vessel whereon he was injured. *Labenz v. National Shipping & Trading Corp.*, D.C.Pa.1957, 153 F.Supp. 785.

Duty of shipowner to furnish injured seaman all necessary care and maintenance does not end with termination of voyage, but continues beyond that time, depending on the facts. *Yates v. Dann*, D.C.Del.1954, 124 F.Supp. 125, reversed on other grounds and vacated on other grounds 223 F.2d 64.

The period for which seaman may recover maintenance and cure for injury sustained during voyage may extend beyond the time of voyage. *Benton v. United Towing Co.*, D.C.Cal.1954, 120 F. Supp. 638, affirmed 224 F.2d 558.

81. — Voyage, reasonable time after termination of

Where seaman suffers from incurable disease, he is entitled to maintenance and cure only for fair time, after voyage, in which to effect such improvements in seaman's condition as reasonably may be expected to result from nursing, care

and medical treatment. *Rofer v. Head & Head, Inc.*, C.A.Fla.1955, 226 F.2d 927.

Liability for maintenance and cure extends for a fair and reasonable time after the voyage to effect improvement in the seaman's condition or until no further improvement can be foreseen. *Koslusky v. U. S.*, C.A.N.Y.1953, 203 F.2d 957.

Shipowner's duty to provide maintenance and cure does not end with voyage, but continues for fair period after that time, during which improvement in seaman's condition could reasonably be expected to result from nursing, care, and medical treatment. *Brett v. J. M. Carras, Inc.*, C.A.Pa.1953, 203 F.2d 451.

The obligation for maintenance and cure does not extend indefinitely when seaman is suffering from an incurable disease or ailment, but it does extend to a reasonable time after the voyage in which to effect such improvement in the seaman's condition as may be reasonably expected from nursing care and medical treatment. *U. S. v. Robinson*, C.A.Ala. 1943, 170 F.2d 578.

The duty of a vessel and her owner to provide maintenance and cure for a seaman afflicted with incurable disease, which manifests itself during his employment but is not caused by it, does not extend beyond a fair time after the voyage in which to effect such improvement in seaman's condition as reasonably may be expected to result from nursing care and medical treatment. *Tol v. U. S.*, C.C.A.Cal.1948, 166 F.2d 775.

The vessel and owners thereof are liable for injuries sustained by seaman in course of employment to the extent of maintenance and cure and wages during continuance of voyage on which he was employed and for a reasonable time thereafter, regardless of whether injury was caused by negligence of employer or by accident. *Seville v. U. S.*, C.C.A.Cal. 1947, 163 F.2d 296.

The duty of vessel and owner to provide "maintenance and cure" for injured or ill seamen embraces medical care, nursing, and attention in order to effect a cure so far as that may be possible and does not end with the voyage, but extends beyond the voyage only for such a reasonable period as may be required to effect such improvement in seaman's condition as reasonably may be expected to result from such care and treatment. *Inter Ocean S. S. Co. v. Behrendsen*, C.C.A.Ohio 1942, 123 F.2d 506.

A pantryman, brutally assaulted by the crew, was entitled to maintenance and cure for a reasonable time after the

voyage terminated. *Geistlinger v. International Mercantile Marine Co.*, D.C. N.Y.1924, 295 F. 176.

Fact that a seaman received 50 per cent. additional wages as a "war risk bonus" did not deprive him of the right to maintenance and care for a reasonable time after termination of the voyage, while being treated for an injury received during a submarine attack on the vessel. *Saunders v. Luckenbach Co.*, D.C. N.Y.1919, 262 F. 845, affirmed 262 F. 849.

If injury or illness outlasts voyage, right to maintenance and cure continues for reasonable time thereafter, depending on particular circumstances of case. *Sawyer v. California Tanker Co.*, D.C. N.J.1937, 147 F.Supp. 324.

The duration of a seaman's right to maintenance and cure is measured by a fair time after the voyage in which to effect such improvement in the seaman's condition as may be reasonably expected to result from nursing, care, and medical treatment. *Triantafilos v. U. S.*, 87 F. Supp. 965, affirmed 179 F.2d 310. See, also, *Jaskolski v. Groves*, D.C.Pa.1949, 84 F.Supp. 495; *Lipscomb v. Groves*, D.C.Pa. 1949, 83 F.Supp. 402, affirmed 187 F.2d 40; *Steinberg v. American Export Lines*, D.C.Pa.1948, 81 F.Supp. 362.

In cases of illness or injury at sea, the seaman is entitled to charge his maintenance and cure for a reasonable time after the end of the voyage. *The Alpha*, D.C.Pa.1942, 44 F.Supp. 809.

"Maintenance and cure" to which injured seaman is entitled does not mean maintenance and cure until recovery, but is to be allowed for a reasonable time, to be determined by facts in the particular case, after return of vessel to port. *Lynskey v. Great Lakes Transit Corporation*, D.C.N.Y.1942, 42 F.Supp. 816.

A seaman injured while in the service of a ship is entitled to maintenance and cure, but where the disability arises after he has left the ship there is ordinarily no right to maintenance and cure, although it is generally held that a seaman's right to maintenance and the employer's corresponding duty extend for a reasonable time after the end of the voyage or period of employment. *The W. H. Hoodless*, D.C.Pa.1941, 38 F.Supp. 432.

82. — Maximum degree of improvement generally

Seaman's right to maintenance and cure continues for a reasonable time after the voyage has ended, and this period consists of the time necessary to ef-

Note 82

fect a maximum cure so that no further improvement in seaman's condition is to be expected. *Wilson v. U. S.*, C.A.N.Y. 1956, 229 F.2d 277.

In action by seaman for maintenance and cure, test which was used by trial judge in determining reasonable time for seaman's maintenance and cure, which test was the time necessary "to effect improvement in his condition," was inadequate, and trial judge erred in applying it by limiting maintenance and cure to March 3, 1952, where there was ample evidence to show seaman had not fully recovered on that date. *Id.*

An injured seaman was properly denied recovery for maintenance and cure for period after his condition became incurable. *Robinson v. U. S.*, C.A.Ala.1949, 177 F.2d 582, certiorari denied 70 S.Ct. 611, 339 U.S. 923, 94 L.Ed. 1346.

A seaman suffering from an incurable disease not caused by his employment is entitled to maintenance and cure up to time when no further improvement in his condition is to be expected, and if that period has not passed at date of trial of seaman's libel for maintenance and cure, it may be given effect in the immediate future, provided a definite course of treatment and a future date when it will have served its purpose, is proved. *Muruaga v. U. S.*, C.A.N.Y.1949, 172 F.2d 318.

Where seaman's injuries were caused by his employment, but not by employer's negligence, seaman was not entitled to maintenance and cure after he had received maximum cure that medical treatment and surgical aid could accomplish to effect a cure and forestall future trouble. *Farrel v. U. S.*, C.C.A.N.Y.1948, 167 F.2d 781, affirmed 69 S.Ct. 707, 336 U.S. 511, 93 L.Ed. 413.

An injured seaman's recovery for maintenance and cure should not be extended beyond the time when the maximum degree of improvement to his health is reached, and he is not entitled to maintenance for as long as medical treatment is beneficial, nor for life, if permanently injured. *Luksich v. Misetich*, C.C.A.Cal. 1944, 140 F.2d 812, certiorari denied 64 S.Ct. 1280, 322 U.S. 761, 88 L.Ed. 1589.

Recovery of maintenance and cure should not extend beyond the time when the maximum degree of improvement in health of an injured seaman has been reached. *Olsen v. The Patricia Ann*, D.C.N.Y.1957, 152 F.Supp. 315.

While liability for maintenance and cure does not extend beyond time when maximum cure possible has been ef-

fect, there must be reasonable showing of adequate treatment to convince court that such point has been reached. *Williams v. U. S.*, D.C.Va.1955, 133 F.Supp. 319, affirmed 228 F.2d 129, certiorari denied 78 S.Ct. 1054, 351 U.S. 986, 100 L.Ed. 1499, rehearing denied 77 S.Ct. 28, 352 U.S. 860, 1 L.Ed.2d 71.

The shipowner's obligation to furnish maintenance to an ill seaman is co-extensive in time with his duty to furnish cure, and neither obligation is discharged until the earliest time when it is reasonably and in good faith determined by those charged with the seaman's cure and treatment that the maximum cure reasonably possible has been effected. *Vitco v. Joncich*, D.C.Cal.1955, 130 F.Supp. 945, affirmed 234 F.2d 161.

Seaman who became ill while on voyage was entitled to maintenance from shipowners until date when seaman's physician reasonably and in good faith determined that further treatment would not advance his cure. *Id.*

Pumpman who was injured on vessel was entitled to maintenance during period after he left hospital until date of maximum of cure from injuries. *Mormino v. Leon Hess, Inc.*, D.C.N.Y.1953, 119 F.Supp. 314, affirmed 210 F.2d 831.

The liability for maintenance and cure does not extend beyond time when maximum cure possible has been effected, and there is no right to maintenance so long as disability lasts or for life, but if illness proves incurable, duty to provide maintenance and cure extends ordinarily to a fair time after voyage in which to effect such improvement in seaman's condition as may reasonably be expected to result from nursing, care and medical treatment. *Danstrup v. The Richmond P. Hobson*, D.C.N.Y.1954, 118 F.Supp. 453.

The liability for maintenance and cure of seaman does not extend beyond time when maximum cure possible had been effected. *Haywood v. Jones & Laughlin Steel Corp.*, D.C.Pa.1952, 107 F.Supp. 108.

Liability for maintenance and cure of seaman after the end of the voyage extends only until seaman is so far cured as possible. *Moen v. Endresen*, D.C.N.Y. 1952, 103 F.Supp. 541.

The duty of a shipowner to provide maintenance and cure to injured seaman continues from the time of injury until maximum possible cure has been effected. *La Fontaine v. The G. M. McAllister*, D.C.N.Y.1951, 101 F.Supp. 826.

A seaman was entitled to cure and maintenance for injuries sustained aboard ship up until the time when ac-

cording to the best estimates his condition had become stabilized and the disability whatever its extent could not be improved further. *Cookingham v. U. S.*, D.C.Pa.1949, 87 F.Supp. 203, affirmed 184 F.2d 213, certiorari denied 71 S.Ct. 495, 340 U.S. 935, 95 L.Ed. 675.

A chronic disorder is not a "disability" for the indefinite treatment of which the ship is bound. *The W. H. Hoodless*, D.C.Pa.1941, 38 F.Supp. 432.

Where, in maintenance and cure action, brought under the general maritime law, by seaman who fell down ladder in vessel, jury found that seaman would reach his maximum recovery on certain date, it was proper to allow maintenance to such date, even though such date was beyond date of trial. *McAllister v. Magnolia Petroleum Co.*, Tex.Civ.App.1956, 290 S.W.2d 313, ref. n. r. e., certiorari granted 77 S.Ct. 580, 35 U.S. 1000, 1 L.Ed. 2d 545.

83. — Particular ailments, maximum degree of improvement

Seaman who contracted a kidney ailment while in the service of his vessel was not entitled to maintenance and cure after date on which he reached such stage of improvement that he was discharged as an outpatient and deemed cured as far as possible, notwithstanding fact he required continued medical observation after such date. *Dobbs v. Lykes Bros. S. S. Co.*, C.A.La.1957, 243 F.2d 55.

In seaman's action for wages, maintenance and cure based on various ailments including back sprain and cold, evidence sustained trial court's findings as to dates on which maximum cures for back sprain and cold were achieved. *Rofer v. Head & Head, Inc.*, C.A.Fla.1955, 226 F.2d 927.

Evidence supported finding that seaman who was disabled from complications which followed emergency operation for intestinal obstruction was entitled to care and maintenance up to trial time, as against contention of shipowners that seaman was not entitled to maintenance beyond date immediately following seaman's return to United States from France when he was seen by physician in behalf of United States Public Health Service on ground that seaman's condition amounted to permanent disability and no improvement could reasonably have been expected from nursing, care and medical treatment. *Lipscomb v. Groves*, C.A.Pa.1951, 187 F.2d 40.

Where as result of an old fracture aggravated by injury received by assis-

tant engineer on ship, he suffered permanent impairment of his right hip joint and improvement in his condition ceased and disability became fixed on August 28, 1946 maintenance and cure was properly discontinued as of that date and was not required to be continued until a subsequent time when the engineer was first reemployed after his injury. *Page v. U. S.*, C.A.Or.1949, 177 F.2d 601.

Allowing daily wages as maintenance and cure to seaman for injury to hand from time of leaving hospital until treatment stopped and condition of hand became static was proper. *The Point Fernin*, C.C.A.Tex.1934, 70 F.2d 602.

Maintenance and cure to seaman for injury to hand requiring treatments after leaving hospital should not cease from time of leaving hospital, but should continue for reasonable time until it is apparent that further treatment would not benefit injury. *Id.*

In action for maintenance and cure, evidence established that maximum improvement of permanent disability resulting from injuries sustained by seaman in the service of defendant's vessel had been achieved when attending orthopedic surgeon discharged him from treatment. *Donovan v. Esso Shipping Co.*, D.C.N.J. 1957, 152 F.Supp. 347.

Where seaman was gibbering, helpless, helpless cripple at time that he was discharged from Public Service Hospital as having reached static situation as far as improvement was concerned, but thereafter by determined and continuous application of modern methods of rehabilitation under supervision he was able to speak, to walk, and to work, seaman had not reached maximum cure on day that he was discharged from Public Service Hospital and he was entitled to maintenance to date of trial, excluding those days spent in hospital, and to recover any money expended for his treatment in State Rehabilitation Hospital with credit given to shipping company for amount earned by seaman during period of his rehabilitation. *Scott v. Lykes Bros. S. S. Co.*, D.C.La.1957, 152 F.Supp. 104.

Fireman-watertender who fell ill with diabetic acidosis while in service of ship and, while hospitalized for such disease was found to be suffering from acute heart failure, would be awarded maintenance for period extending from date when he left vessel, still suffering from symptoms and effects of conditions for which he had been hospitalized and treated a year sooner, and date when he reached maximum improvement that med-

ical science was able to effect in his condition up to that time; there would be reserved to him the right to claim whatever further maintenance and cure new discoveries of medical science might show him to be entitled to. *Hylton v. Standard Fruit & S. S. Co.*, D.C.La.1957, 148 F.Supp. 234.

Where seaman while in service of employer on board vessel suffered heart attack and about five days thereafter suffered another heart attack while in hospital and permanent disability resulted, seaman was entitled to maintenance until he reached maximum recovery, notwithstanding that disease was incurable and not directly caused by service as seaman, but by aging process. *Lamon v. Standard Oil Co.*, D.C.La.1954, 117 F.Supp. 831.

In action by ship's laundress for maintenance and cure, evidence established that there was a direct causal relation between injury sustained by laundress and atrophy of muscles of left arm and shoulder, and that laundress had not reached point in her recovery where care and further treatment would not benefit her. *Neville v. American Barge Line Co.*, D.C.Pa.1952, 105 F.Supp. 408.

Evidence established that seaman, who was a diabetic, had obtained maximum cure possible from effects of his deprivation of insulin on or before June 18, 1947, for which he had already received all maintenance and cure to which he was entitled. *Tribune v. U. S.*, D.C.Pa. 1950, 95 F.Supp. 197.

84. — Discharge from hospital or treatment

Fact that seaman requested a discharge to outpatient status from hospital did not work a forfeiture of his right to maintenance where it was not proven that if seaman had not refused hospitalization he would have got well before end of time during which he was allowed maintenance. *Ahmed v. U. S.*, C.A.N.Y.1949, 177 F.2d 898.

A seaman's discharge from hospital at his own request did not bar right to further maintenance and cure, where no further hospitalization was needed at the time, and seaman, suffering from asthma, sought a change of climate. *Moyle v. National Petroleum Transport Corp.*, C.C.A. N.Y.1945, 150 F.2d 840.

Evidence showed injured seaman was not entitled to maintenance after being discharged by hospital as needing no further treatment. *The Ipswich*, D.C. Md.1930, 46 F.2d 136.

Where physician, who examined and treated seaman, after accident, discharged

seaman as fit to resume work, and seaman, who was elderly, was suffering from complaints not connected with the accident, refusal of owner of tug to pay maintenance in any amount to seaman was not arbitrary or unreasonable, and seaman was not entitled to recover damages for failure of owner of tug to pay maintenance. *Sroki v. Koch-Ellis Marine Contractors, Inc.*, D.C.La.1957, 151 F.Supp. 559.

Where chief steward was allegedly injured aboard ship as result of his own negligence, and two days later he left ship temporarily to go home over weekend, and on second day after reaching home he suffered from much pain and went to marine hospital, and thereafter he received out-patient care at another hospital where for first time he made claim that he was injured on the ship, he was entitled to maintenance and cure from date of discharge from marine hospital through date of final discharge as cured from other hospital. *Witt v. U. S.*, D.C.N.Y.1949, 82 F.Supp. 696.

A seaman was not entitled to maintenance and cure after discharge from hospital as fit for duty. *Miller v. U. S.*, D.C.N.Y.1943, 51 F.Supp. 924.

85. — Discharge from employment

Shipowner's duty to furnish maintenance and cure to injured seaman does not stop with discharge of seaman. *Murphy v. American Barge Line Co.*, C.C.A. Pa.1948, 169 F.2d 61, certiorari denied 69 S.Ct. 133, 335 U.S. 859, 93 L.Ed. 406.

Seaman injured on ship is entitled to cure and maintenance after discharge during disability. *The Eastern Dawn*, D.C.Pa.1923, 25 F.2d 322.

Since seaman's rights to medical care and maintenance under both the Jones Act, section 688 of this title, and the general maritime law, expired upon termination of his employment with ship, his administratrix could not recover for his funeral expenses where he died six days after his discharge from ship. *Runci v. U. S.*, D.C.Mass.1949, 82 F.Supp. 524.

86. — Convalescence

A ship, during the time a seaman is recovering from an illness or wound incurred in service of the ship, is required to take care of the expenses of cure and maintenance. *Ballard v. Alcoa S. S. Co.*, D.C.Ala.1954, 122 F.Supp. 10.

A seaman is entitled to care and maintenance for period of convalescence following his discharge from vessel after appendectomy. *Ziegler v. Maine Transport Lines*, D.C.Pa.1947, 78 F.Supp. 218.

67. — Reemployment

Where seaman was still in need of medical care and attention at time of trial of his action for maintenance and cure for injuries suffered aboard tug, fact that seaman was forced by financial necessity to return to his regular employment was not a bar to his recovery. *Yates v. Dann*, C.A.Del.1955, 223 F.2d 64.

Where seaman was discharged from Marine hospital on June 14, 1946, but did not sufficiently recover his health to go to work until following November 6th, on which date he resumed his regular employment, he was entitled to maintenance and cure until November 6th, instead of merely until June 14. *Virgin v. U. S.*, C.C.A.Md.1947, 165 F.2d 81, certiorari denied 68 S.Ct. 1341, 334 U.S. 834, 92 L.Ed. 1760.

The obligation of vessel's owner to provide maintenance and cure for injured or ill seaman is discharged when the seaman has successfully re-entered gainful employment. *Inter Ocean S. S. Co. v. Behrendsen*, C.C.A.Ohio 1942, 128 F.2d 506.

Where seaman's illness arose during his employment by respondent employer, but illness was not caused by such employment, and seaman was dismissed on recommendation of respondent's physician, seaman was not precluded from recovering maintenance and cure from respondent because seaman worked successively for two other employers. *Loverich v. Warner Co.*, C.C.A.Pa.1941, 118 F.2d 690.

Where seaman after injury left boat, and for almost three years continued work on other vessels, and never presented himself for medical attention, he was entitled to nothing for maintenance and cure. *The Ball Brothers*, D.C.N.Y. 1929, 35 F.2d 261.

In seaman's action for maintenance and cure on account of tuberculosis alleged to have been contracted and aggravated while serving on company's vessel, where seaman concededly fell ill with tuberculosis while serving on vessel, he was entitled to maintenance and cure from date of discharge to out-patient status until found fit for duty at the then prevailing rate. *Quintin v. Sprague S. S. Co.*, D.C.N.Y.1957, 149 F.Supp. 226.

Where chief mate had received maintenance and cure in kind up to date of his return to United States for injuries sustained when he was on deck of vessel and was struck by oil drum during hurricane, administratrix of chief mate's estate was not entitled to recover maintenance

and cure for the period prior to his return to United States but was entitled to recover maintenance and cure for period of 85 days from that date to date he reshipped. *Gibbons v. U. S.*, D.C.Pa. 1934, 124 F.Supp. 900.

Where employee of towing company was injured while working on company's barge, he was not entitled to recover maintenance for periods during which he was re-employed by company, or able to maintain himself through other employment, but could recover for period during which he was hospitalized at his own expense. *Benton v. United Towing Co.*, D.C.Cal.1954, 120 F.Supp. 638, affirmed 224 F.2d 558.

Where engineer was paid maintenance and cure to March 6, 1945, with respect to injuries inflicted on January 21, 1944, and it appeared that on June 1, 1944, engineer returned to sea and worked with few interruptions to June, 1945, engineer was not entitled to recover on claim for maintenance and cure. *Brailas v. U. S.*, D.C.N.Y.1948, 79 F.Supp. 963.

Chief steward disabled by injuries sustained while employed on board vessel was entitled to maintenance from date he was paid-off vessel on which he was injured until date he signed on another vessel on which he received the same wages and occupied the same billet, though he had been discharged from hospital as fit for duty one week before signing on second vessel. *Battice v. U. S.*, D.C.N.Y.1948, 79 F.Supp. 932.

Where seaman, who had been taken ill during course of voyage, was returned on February 25, 1945, to port from which he had originally sailed in good health and able to work and at the time the country was at war and seamen were in demand, seaman could have secured suitable employment, and, having failed to do so, was not entitled to wages and maintenance beyond that date. *Warren v. U. S.*, D.C.Mass.1948, 75 F.Supp. 836.

Injured seaman was not entitled to allowance for maintenance and cure during period when he was earning \$35.00 a week in shore employment, because he was able to support himself and was not incapacitated. *Socony-Vacuum Oil Co. v. Aderhold*, 1951, 240 S.W.2d 751, 150 Tex. 292.

88. — Part time work

If maximum possible cure has not been effected, the seaman's right to maintenance and cure does not terminate merely because he has secured some employment, and consequently if for periods during convalescence seaman is physical-

Note 88

ly capable of doing part-time work he should not be deprived permanently of his right to maintenance and cure and also if during convalescence he is physically incapable of doing even part-time work seaman is entitled to maintenance and cure for the days he did not work. *Wilson v. U. S.*, C.A.N.Y.1956, 229 F.2d 277.

Seaman, who was discharged as an out patient and told to try some light work on March 3, 1952, but who worked only 70 days from March 3 to July 17, 1952, at which time he returned to full time employment at his regular job, was entitled to receive maintenance and cure on day to day basis during such period for each day on which he was unable to perform or to obtain light work upon showing some reason why he had not secured employment for entire convalescence period. *Id.*

89. — Particular cases

Where it appeared that seaman suffered pneumonia from exposure to moisture while aboard seagoing tug but was thereafter cured of pneumonia, he was entitled to no further maintenance and cure for such disease. *Hern v. Moran Towing & Transportation Co.*, C.C.A.N.Y.1943, 138 F.2d 900.

Seaman having voluntarily left whaling ship, was not entitled to further compensation, notwithstanding hand injury not incapacitating him from regular duties. *Siciliano v. California Sea Products Co.*, C.C.A.Cal.1930, 44 F.2d 784.

One injured while employed as chambermaid on river steamer is entitled to judgment against owner thereof for maintenance and cure after period for which a district judge awarded her maintenance and cure on findings, supported by evidence, that injuries caused functional nervous condition totally disabling libellant, until she is cured, disability becomes permanent or maximum cure possible is effected, in view of undisputed medical testimony that such condition had progressively grown worse and evidence that treatment known to medical science might benefit or improve condition. *Sobosle v. U. S. Steel Co.*, D.C.Pa.1957, 151 F.Supp. 767.

In seaman's action for maintenance and cure during time when he was hospitalized after having twice attempted suicide, and his condition was diagnosed as acute schizophrenic reaction, evidence established that seaman was entitled to cure for period of two months from date of discharge from hospital. *Puentes v. Panama Canal Co.*, D.C.N.Y.1956, 146 F.Supp. 303.

Where certificate upon the discharge from United States Public Health Service Hospital stated that seaman would be fit for duty in four weeks' time, liability of merchant vessel owner for maintenance and cure terminated at end of such time. *Gardner v. Sinclair Refining Co.*, D.C.Pa.1955, 129 F.Supp. 225, affirmed 227 F.2d 958. See, also, *Dobbs v. Lykes Bros. S. S. Co.*, D.C.La.1956, 140 F.Supp. 732.

Seaman, who sustained hernia in service of vessel, and who waited 13 days from date of discharge from such service before entering hospital, did not wait an unreasonable length of time and, therefore, was entitled to maintenance and cure during such period. *Id.*

A seaman suffering injury to his foot while in vessel's service was not entitled to maintenance for period during which his feet bothered him because of arthritic condition after his return to sea following period for which he was awarded maintenance. *Soriano v. U. S.*, D.C.N.Y. 1953, 115 F.Supp. 234.

Where tubercular condition of seaman at time of discharge from hospital was to be regarded as apparently arrested for one year, during which seaman was completely disabled, and thereafter seaman was to continue with periodic medical checkups for five years, during which his condition was to be regarded as arrested in absence of additional positive findings or deterioration in condition and during five-year interval he would be disabled from performing as seaman but could perform suitable light work, and after five years he would be regarded as cured although he would be unable to ever resume work as seaman, seaman was entitled to maintenance only from date of discharge until a date one year from day when last positive culture was found. *Moen v. Endresen*, D.C.N.Y.1952, 103 F.Supp. 541.

In chambermaid's action for maintenance and cure, evidence established that libellant was entitled to maintenance and cure from March 30, 1947, until March 14, 1951, excepting periods of March 30, 1947, to June 23, 1947 and January 10, 1950 to January 19, 1950, when she was afforded hospitalization. *Reabe v. Carnegie-Illinois Steel Corp.*, D.C.Pa.1951, 100 F.Supp. 723.

In action by seaman for cure and maintenance, evidence showed that seaman was entitled to cure and maintenance for period of 10 months after June 7, 1947, when he was discharged from hospital. *Triantaflos v. U. S.*, 87 F.Supp. 965, affirmed 179 F.2d 310.

Seaman was entitled to maintenance and cure from date of leaving vessel to date of trial excluding such periods as he was employed for wages and period he was hospitalized under no expense to himself. *Steinberg v. American Export Lines, D.C.Pa.1948, 81 F.Supp. 362.*

Where undisputed medical testimony showed that an operation would restore to bartender of steamship a good working hand and that expert would perform operation without cost to bartender, bartender's allowance for maintenance and cure was limited to a period of one year less all days as an in-patient for the operation plus the interval between date of accident until date of his last discharge from hospital deducting all days during which bartender was an in-patient at the hospital. *Santle v. Meseck Steamboat Co., D.C.N.Y.1941, 41 F.Supp. 397.*

90. Jurisdiction and venue

The United States District Court had jurisdiction over subject matter of suit against the United States under the Jones Act, section 688 of this title, to recover damages for injuries allegedly sustained by a member of the crew of a seagoing tug owned and operated by the United States and for maintenance under general admiralty law, and venue was properly laid in the district of libellant's residence. *Koslusky v. U. S., D.C.N.Y.1952, 106 F.Supp. 653, affirmed 208 F.2d 957.*

In injured seaman's action for maintenance and cure at law, the action is more circumscribed than in admiralty and a seaman is entitled to a jury trial but the court must have jurisdiction over the parties and subject-matter before seaman is permitted entry into the district court. *Catherall v. Cunard S. Co., D.C.N.Y.1951, 101 F.Supp. 230.*

A cause of action, alleged in complaint, for maintenance and cure of seaman, injured while working as member of crew of defendant corporation's vessel, was within federal district court's jurisdiction. *Serbokov v. Great Lakes Transit Corporation, D.C.N.Y.1941, 37 F.Supp. 411.*

The court of admiralty has jurisdiction to enforce the payment of expenses of nursing and lodging by a libel, for they are in the nature of additional wages during sickness. *Harden v. Gordon, C.C.Me.1823, 2 Mason 541, Fed.Cas. No.8,047.*

91. Rem, proceeding in

Shipowner has duty to furnish medical aid to seaman who suffers injury or be-

comes ill in service of ship, and damages for neglect of such duty are recoverable in proceeding in rem. *The Point Fernin, C.C.A.Tex.1934, 70 F.2d 802.*

Where woman cook aboard respondent's vessel, who was injured when she struck her toe against raised hatch cover, brought libel seeking damages, maintenance and cure, her action for damages was maintainable in personam against ship's owner, and her action for maintenance and cure was maintainable against ship. *Haycraft v. The Java Sea, D.C.Ky.1956, 143 F.Supp. 303.*

A seaman injured while engaged in his work could maintain libel in rem for maintenance and cure against the ship, though ship was being operated at the time of injury under a bare boat charter whereby charterer agreed to man, navigate, operate, victual and supply the ship. *The Edward Peirce, D.C.N.Y.1939, 28 F.Supp. 637.*

Seaman bringing action in rem against vessel could recover for maintenance and cure, notwithstanding failure to make case for indemnity damages. *The James E. Ferris, D.C.N.Y.1932, 1 F.Supp. 1018.*

92. Subsequent proceedings

Award made by district court to injured seaman for maintenance and cure was not conclusive of right of seaman to further maintenance and cure if it should appear in a later suit that his condition warranted an additional award. *Cookingham v. U. S., C.A.Pa.1950, 184 F.2d 213, certiorari denied 71 S.Ct. 495, 340 U.S. 935, 95 L.Ed. 675.*

Even after a reasonable allowance for immediate future for maintenance and cure of seaman inflicted with incurable disease manifesting itself during his employment but not caused thereby, there may exist a further liability for further relief in another action under proper circumstances. *Tol v. U. S., C.C.A.Cal. 1948, 166 F.2d 775.*

Seaman who was disabled with tuberculosis and was awarded maintenance from date of this discharge from hospital until date one year from day his last positive culture was found could, in event that he was required in future to undergo treatment of curative nature, maintain a new proceeding to recover maintenance and cure. *Moen v. Endresen, D.C.N.Y.1952, 103 F.Supp. 541.*

93. Discretion of court

Where injured seaman who brought suit in federal district court for indemnity under maritime law based on un-

Note 93

seaworthiness, and for maintenance and cure, was a foreign seaman who signed articles in foreign port for services on foreign ship of respondent foreign corporation, and seaman had received and was entitled to substantial benefits in nature of compensation for his injuries under laws of his and respondent's country, and no injustice would result if he was left to such remedies, federal district court in exercise of its discretion would decline jurisdiction. *Johansson v. O. F. Ahlmark & Co.*, D.C.N.Y.1952, 107 F.Supp. 70.

Where foreign seaman who signed articles in a foreign port for service on foreign ship of respondent foreign corporation brought a claim in federal district court for indemnity under maritime law based on unseaworthiness, and for maintenance and cure, under which circumstances district court had discretion as to whether to entertain suit, inquiry would be made as to whether justice would be as well done by remitting parties to their home forum, in exercise of such discretion. *Id.*

A seaman injured or taken sick in the service of his ship may recover the maintenance and cure to which he is entitled at the time of trial, including, in the discretion of court, such amount as may be needful in the immediate future. *Ladjimi v. Pacific Far East Line*, D.C.Cal. 1951, 97 F.Supp. 174.

The admiralty court cannot use its equitable discretion to make an award to a seaman for maintenance and cure for injury or illness unless facts, measured by the yardstick of the law, warrant. *Ballou v. City of New York*, D.C.N.Y.1944, 55 F.Supp. 699, affirmed 153 F.2d 427.

94. Dismissal

Where, since date of injury, seaman had been confined to the United States Public Health Service Hospital at no cost to himself, seaman's claim for maintenance would be dismissed without prejudice to his right to again institute such claim should it become necessary to do so. *Samad v. The Etivebank*, D.C.Va. 1955, 134 F.Supp. 530.

Where seaman afflicted with tuberculosis had been patient in marine hospital since his illness was discovered, as long as maintenance and cure at marine hospital were available to him, he would be required to accept it, and there was no present liability on United States, as owner of vessel on which seaman served, for maintenance and cure and, since whether libellant would have a future

claim for maintenance and cure could not be forecast, maintenance and cure count of libel would be dismissed without prejudice. *Benjamin v. U. S.*, D.C.N.Y. 1950, 92 F.Supp. 489.

95. Joinder of causes

A seaman who was injured on pier through alleged negligence of railroad company and was incapacitated for some months had a cause of action *ex contractu* under shipping articles against steamship corporation employing him and a cause of action *ex delicto* against railroad company for failure to properly maintain its right of way. *Jones v. Waterman S. S. Corp.*, C.C.A.Pa.1946, 155 F. 2d 992.

The right to maintenance, cure and wages implied in law as a contractual obligation arising out of the nature of the employment is independent of the right to indemnity or compensatory damages for an injury caused by negligence, and the two rights are consistent and cumulative. *Id.*

Joinder of a count for negligence under the Jones Act, section 688 of this title, with a count for maintenance and cure under the general maritime law was proper. *Bay State Dredging & Contracting Co. v. Porter*, C.C.A.Mass.1946, 153 F.2d 827.

Seaman seeking to recover against shipowner for injuries sustained aboard ship while traveling in a convoy, and also seeking to recover for maintenance and cure, could not in such action join a cause of action on war risk policy procured by shipowner under orders of the Maritime War Emergency Board, where such policy imposed no obligation on shipowner. *Murphy v. Gulf Oil Corporation*, D.C.Pa.1944, 55 F.Supp. 962, affirmed 147 F.2d 548.

96. Notice

Seaman, to recover for maintenance and cure, need not notify shipowner of obvious need of medical attention so that owner may provide it at marine hospital. *Stevens v. R. O'Brien & Co.*, C.C.A.Mass.1933, 62 F.2d 632.

A fireman who made no complaint to ship's officers or informed them that he needed proper medical care and attention was not entitled to any sum of money for "maintenance and cure." *The Dora*, D.C.Pa.1942, 47 F.Supp. 685.

97. Demand

Seaman's failure to demand maintenance and cure of owner at end of voyage bears only on good faith and just-

ness of claim, and does not necessarily defeat claim. *Stevens v. R. O'Brien & Co.*, C.C.A.Mass.1933, 62 F.2d 632.

Whether seaman should be sent to hospital without demand therefor depends on facts of particular case. *Wiley v. Alaska Packers' Ass'n*, C.C.A.Cal.1927, 18 F.2d 8.

It is not master's duty to send every seaman afflicted with cold to hospital, especially where seaman makes no such demand or representation of inability to work. *Id.*

98. Abatement

Right of injured ship officer to recover maintenance and cure was quasi contractual and did not abate on his death. *Sperbeck v. A. L. Burbank & Co.*, C.A.N.Y.1951, 190 F.2d 449.

99. Assumption of risk

In action for maintenance and cure, assumption of risk may not be raised. *Aguilar v. Standard Oil Co. of New Jersey*, N.Y.1943, 63 S.Ct. 930, 318 U.S. 724, 87 L.Ed. 1107. See, also, *Couts v. Erickson*, C.A.Fla.1957, 241 F.2d 499; *Murphy v. Light*, C.A.Fla.1955, 224 F.2d 944, certiorari denied 76 S.Ct. 348, 350 U.S. 960, 100 L.Ed. 834.

The district court, in denying relief, sought by former seaman filing libel against owner and operator of fishing vessel for maintenance and cure because of tuberculosis contracted as result of extended exposure to wind and stormy weather, on ground that disability came from ship's service, erred in applying notions of assumed risk, which are not permissible in action for maintenance and cure. *Couts v. Erickson*, C.A.Fla. 1957, 241 F.2d 499.

Assumption of risk is no defense to claim for maintenance and cure arising out of employment contract as seaman. *Stevens v. R. O'Brien & Co.*, C.C.A.Mass. 1933, 62 F.2d 632.

100. Contributory negligence

In action for maintenance and cure, the defense of contributory negligence may not be raised. *Aguilar v. Standard Oil Co. of New Jersey*, N.Y.1943, 63 S.Ct. 930, 318 U.S. 724, 87 L.Ed. 1107. See, also, *Couts v. Erickson*, C.A.Fla.1957, 241 F.2d 499; *Murphy v. Light*, C.A.Fla. 1955, 224 F.2d 944, certiorari denied 76 S.Ct. 348, 350 U.S. 960, 100 L.Ed. 834.

101. Discharge of obligation

A shipowner's mere giving of hospital ticket to seaman manifesting symptoms of mental disorder, without providing

means to get him to hospital, or mere furnishing of means of transportation thereto, without making sure that they are employed, does not necessarily discharge owner's obligation to furnish seaman maintenance and cure. *Spellman v. American Barge Line Co.*, C.A.Pa.1949, 176 F.2d 716.

A shipowner's obligation for maintenance is met if the fare provided is adequate to maintain the seaman during cure, and when seaman was confined in jail during period of cure, where he was provided with jail fare and accommodations without incurring any expense or obligation therefor, no further obligation rested upon the shipowner, and recovery for maintenance for such period could not be had. *Ballard v. Alcoa S. S. Co.*, D.C.Ala.1954, 122 F.Supp. 10.

102. Disclosure of health, failure to make

Maintenance and cure may be denied a seaman who conceals pre-existing illness or injury at time of his employment if concealment amounted to culpable negligence. *Lipscomb v. Groves*, C.A.Pa.1951, 187 F.2d 40.

A seaman who believes himself fit for duty and signs on without any fraudulent concealment is entitled to maintenance and cure, notwithstanding a previous condition of ill health. *Ahmed v. U. S.*, C.A.N.Y.1949, 177 F.2d 898. See, also, *Keegan v. U. S.*, D.C.N.Y.1953, 113 F.Supp. 6.

The ship owner's liability for maintenance and cure extends to seamen becoming ill or injured during the period of their service but that liability does not extend to a seaman who with knowledge that he is afflicted with a disabling disease conceals the fact and holds himself out as fit. *Tawada v. U. S.*, C.C.A. Cal.1947, 162 F.2d 615.

A seaman cannot recover for cure and maintenance if, at the time he was employed, he failed to disclose any fact which an ordinarily prudent person should have known was material to shipowner's risk of liability for cure and maintenance. *Lindquist v. Dilkes*, C.C. A.Pa.1942, 127 F.2d 21.

In determining whether seaman's failure to disclose pre-existing health condition is defense to seaman's claim for maintenance and cure, seaman is required to make spontaneous disclosure of past medical history or events only when, in seaman's opinion, the shipowner would consider them matters of importance. *Lorenson v. Jenney Mfg. Co.*, D.C.Mass.1957, 155 F.Supp. 213.

Note 102

Shipowner asserting seaman's failure to disclose pre-existing health condition as defense to seaman's claim for maintenance and cure has burden to prove that the seaman should have believed that the nondisclosed medical history or events would have been considered matters of importance by the shipowner. *Id.*

Where seaman willfully failed to inform shipowner of a disabling condition at time of his pre-employment physical examination, shipowner was not liable to pay maintenance and cure when such condition manifested itself or caused a fairly disabling condition. *Zackey v. American Export Lines, Inc., D.C.N.Y. 1957, 152 F.Supp. 772.*

Failure of seaman, who is seeking employment, to inform shipowner of disabling disease of which seaman is aware constitutes a breach of duty, but measure of such obligation is subjective and it might properly be found that a seaman, who has been discharged from the hospital as fit for duty, is not sufficiently aware of the extent of his disease to call into play a duty of spontaneous disclosure. *Hazelton v. Luckenbach S. S. Co., D.C.Mass.1955, 134 F.Supp. 525.*

Where, at time shipowner employed seaman, seaman affirmatively misrepresented his state of health, employer did not thereafter have right to rescind the employment contract but had only defense of misconduct or fraud, and such defense could be effective only if the fraud was a direct and affirmative cause of the liability. *Id.*

Seaman who signs on ship without knowledge that his system contains germs of disease that may later incapacitate him, or who knows he has an ailment, but has no reason to believe that it is inherently serious or may become disabling, is not barred from claiming maintenance and cure if the disease manifests itself during his service with the ship, but one who withholds or actively conceals knowledge that he has a disease which is inherently serious or may become disabling is barred. *Weller v. U. S., D.C.Cal.1952, 106 F.Supp. 502.*

Shipowner's liability for maintenance and cure extends to seamen becoming injured during period of their service, but does not extend to seaman who, with knowledge that he is afflicted with disabling disease, conceals that fact and holds himself out as fit. *Ward v. American President Lines, D.C.Cal.1951, 95 F. Supp. 609.*

Seaman was under no duty at time of his employment to disclose the fact that

he had suffered an illness of undetermined character on a voyage made some months before, where, though his E Certificate had been withheld by the Coast Guard after his illness, the certificate was thereafter returned to him on ground that he had presented sufficient evidence to establish that he was competent to go to sea. *Sims v. U. S. War Shipping Administration, D.C.Pa.1950, 91 F.Supp. 90, reversed on other grounds 186 F.2d 972, certiorari denied 72 S.Ct. 31, 342 U.S. 816, 96 L.Ed. 617.*

A seaman cannot recover for maintenance and cure if, at time he was employed, he failed to disclose any fact which an ordinarily prudent person should have known was material to shipowner's risk of liability for maintenance and cure. *Gray v. Bernuth, Lembecke, D. C.Pa.1949, 88 F.Supp. 586, opinion adhered to on rehearing 89 F.Supp. 156.*

A seaman had the duty to disclose, at the time he was employed, whatever he as an ordinary, prudent person should have known was material to ship owner's risk of liability for cure and maintenance. *Burns v. U. S., D.C.Pa.1945, 62 F.Supp. 603.*

103. — Physical examination

Where shipowner undertakes by physician's examination to satisfy himself as to fitness of a prospective crew member, such examination should be proof of seaman's condition unless he conceals something which he knows to be relevant for which he can reasonably be charged with so knowing. *Ahmed v. U. S., C.A.N.Y.1949, 177 F.2d 898.*

Where shipowner undertakes by physician's examination to satisfy himself as to fitness of prospective member of crew, such examination is sufficient proof of seaman's condition unless he conceals something which he knows to be relevant or which he can reasonably be charged with so knowing. *Fuentes v. Panama Canal Co., D.C.N.Y.1956, 146 F.Supp. 803.*

In seaman's action for wages, maintenance and cure during time when he was hospitalized after having twice attempted suicide, and his condition was diagnosed as acute schizophrenic reaction, evidence failed to establish that he had wilfully or materially misrepresented his condition when examined by employer's physician before embarking on vessel, in failing to disclose that he had been previously hospitalized when schizophrenic condition had allegedly been diagnosed. *Id.*

Where, almost annually from at least 1945, seaman had been hospitalized because of gastric ulcers, and, in 1952, had spent week in hospital following complaints of abdominal pain of two months duration but had been discharged with "fit for duty" certificate, seaman, who, when asked, during 1952 pre-employment examination, whether he had ever been hospitalized or undergone any operations or had any serious illness or injuries, disclosed only minor 1947 operation, was guilty of an affirmative misrepresentation, even though he may have believed that he was fit at the moment. *Hazelton v. Luckenbach S. S. Co.*, D.C.Mass.1955, 134 F.Supp. 525.

Seaman was under no duty to volunteer, at the time he was employed, to shipowner's physicians his past detailed clinical history, where seaman considered himself to be in good health, did not believe past history had any appreciable bearing on his fitness for employment and shipowner's physicians did not elicit past clinical history by questions. *Saar v. Sun Oil Co.*, D.C.Pa.1954, 124 F.Supp. 684.

Failure of seaman to disclose his prior treatment for pinworms when he accepted employment as member of crew did not preclude his recovery from shipowner for maintenance for disability due to pruritis ani, where seaman in good faith believed he could perform the services which would ordinarily be required of him and shipowner's examining physicians passed seaman as fit for duty without requesting a detailed clinical history of seaman. *Id.*

104. — Specific impairments of health

A seaman contracting tuberculosis as result of extended exposure to wind and stormy weather on open deck of fishing vessel did not lose right to maintenance and cure because of concealment of his prior history of tuberculosis, in absence of evidence of any purpose, plan or attempt by him to mislead, conceal or misrepresent such history or state of his health, where he thought himself fit, as did vessel's master, who engaged him after seeing him, and vessel owner, on another ship of which seaman had served without untoward effects. *Couts v. Erickson*, C.A.Fla.1957, 241 F.2d 499.

A seaman, contracting tuberculosis as result of extended exposure to wind and stormy weather on fishing vessel did not lose right to maintenance and cure on ground that he should have known because of his medical history of extended treatments for such disease, that he was unfit for service on fishing vessels, when

master of such vessel engaged him, in view of uncontradicted medical evidence that seaman was discharged from sanitarium as fit for duty five months before such time and undisputed evidence that wet rigors of his two weeks' service on vessel were sufficient to reactivate tuberculosis then in quiescent, inactive, recovered state. *Id.*

Seaman's failure to disclose his mental condition at time he shipped aboard vessel would not disentitle him to recover for maintenance and cure. *Perez v. Suwanee S. S. Co.*, C.A.N.Y.1956, 239 F.2d 180.

A seaman's failure to disclose, when he was employed, that he had prostate enlargement did not bar his recovery for cure and maintenance where he subsequently became disabled from hypertrophy of the prostate, benign, accompanied by bladder pains, frequency of urination and acute retention. *Lindquist v. Dilkes*, C.C.A.Pa.1942, 127 F.2d 21.

Where, prior to shipping aboard vessel, seaman knew that he had a condition, which had been diagnosed as abnormal thyroid, and for which he was advised to have an operation within two months, but seaman was not asked to disclose and did not disclose anything about his health and prior medical history at the time of the shipping, shipowner would not be liable for maintenance for period during which seaman would have the operation and recover therefrom or for payment of seaman's medical expenses, in view of facts that seaman had not disclosed such condition and that the illness did not really occur on shipowner's vessel. *Fardy v. Comet*, D.C.Mass.1955, 134 F.Supp. 528.

Where, in defense to claim of seaman's administratrix for maintenance and cure, shipowner asserted affirmative defense based upon seaman's misconduct or fraud in misrepresenting his physical condition at time of employment, such defense was not made out in view of fact that seaman, after his discharge from the hospital, was found to be suffering from cancer which was unrelated to conditions which seaman misrepresented. *Hazelton v. Luckenbach S. S. Co.*, D.C.Mass. 1955, 134 F.Supp. 525.

Where seaman had suffered a back injury prior to his employment by respondent, and did not reveal such injury to respondent at time seaman commenced work but an ordinarily prudent person would not have viewed such injury as an indication that seaman was unfit for employment, and for about two months seaman was able to perform his duties as

Note 104

an able-bodied seaman until he strained his back, respondent could not escape liability to seaman for maintenance because of the earlier back injury. *Baun v. Hudson*, D.C.Alaska 1952, 108 F.Supp. 523.

In action by tubercular seaman for maintenance and cure, evidence established that seaman not only failed to disclose but actively concealed, information concerning his tubercular condition that he, as an ordinarily prudent person, should have known was material to risk involved, and, therefore, was barred from making claim for maintenance and cure. *Weller v. U. S.*, D.C.Cal.1952, 106 F.Supp. 502.

Seaman's failure at time of employment to disclose a nervous condition from which he had suffered for several years causing acute tenseness and nervousness after two or three weeks at sea, did not bar recovery for maintenance and cure and wages, where seaman subsequently became unfit for sea duty as a result of aggravation of nervous condition. *Gray v. Bernuth, Lembecke Co.*, D.C.Pa.1950, 89 F.Supp. 153.

A seaman who, at time of his employment, failed to disclose a prior existing hernia, and whose incapacitation during the voyage was due solely to the fact that he forgot to bring his truss along, could not recover for cure and maintenance. *Burns v. U. S.*, D.C.Pa.1945, 62 F.Supp. 603.

105. Estoppel

A judgment allowing seaman recovery in his action for indemnity for injuries and for lost wages and medical expenses estopped seaman from maintaining subsequent action for medical expenses, where all the facts were before court in prior action except payment of medical bill before such action was instituted, and seaman's counsel stated in prior action that there was no evidence of medical expense. *Runyan v. Great Lakes Dredge & Dock Co.*, C.C.A.Ohio 1944, 141 F.2d 393.

Injured engineer's refusal of medical service tendered, and his employment of own physician, estopped him from claiming maintenance and cure. *Stewart v. U. S.*, D.C.La.1928, 25 F.2d 890.

A judgment allowing injured seaman recovery in his action against shipowner for indemnity for injuries and loss of wages, including room and board, estopped seaman from maintaining subsequent action against shipowner for maintenance. *McCarthy v. American Eastern Corp.*, D.C.Pa.1949, 81 F.Supp. 612, af-

firmed 175 F.2d 727, certiorari denied 70 S.Ct. 349, 338 U.S. 911, 94 L.Ed. 561.

106. Fellow servant rule

In action for maintenance and cure, the fellow-servant doctrine may not be raised. *Agular v. Standard Oil Co. of New Jersey*, N.Y.1943, 63 S.Ct. 930, 318 U.S. 724, 87 L.Ed. 1107. See, also, *Couts v. Erickson*, C.A.Fla.1957, 241 F.2d 499; *Murphy v. Light*, C.A.Fla.1955, 224 F.2d 944, certiorari denied 76 S.Ct. 348, 350 U.S. 960, 100 L.Ed. 834.

107. Limitations

A seaman's action for maintenance, cure, and wages was contractual in nature and limited by C.P.A. § 48 prescribing time limit of six years for institution of suits based on contract. *Land v. U. S. Lines Co.*, D.C.N.Y.1955, 137 F.Supp. 376.

A continuous failure to provide maintenance and cure to seaman entitled thereto gives rise to successive breaches of contract with successive periods of limitation commencing anew from day to day. *Loverich v. Warner Co.*, D.C.Pa.1940, 36 F.Supp. 943, remanded on other grounds 118 F.2d 690, certiorari denied 61 S.Ct. 1104, 313 U.S. 577, 85 L.Ed. 1535.

Where shipowner's duty to furnish maintenance and cure has arisen, should the shipowner at any time thereafter fail to maintain a disabled seaman as required by his contractual obligation implied by law, at that moment breach of implied contract will have occurred and the Pennsylvania 6-year period of limitations will have begun to run. *Id.*

108. Laches

In determining whether seaman's claim for maintenance and cure is barred by laches, analogy to state statute of limitations is only an analogy and not a rule. *Loverich v. Warner Co.*, C.C.A.Pa. 1941, 118 F.2d 690.

The obligation of employer to furnish maintenance and cure to seaman is a continuous one, and, therefore, even applying the analogy of state statute of limitations, failure to recover for time prior to six-year period would not necessarily bar recovery for later time if delay in bringing suit did not, itself, constitute laches. *Id.*

Where it appeared that seaman, whose illness arose during his employment by respondent employer, was discharged in July, 1933, that that fall he was hospitalized for two months, that he was then employed by another company for

14 months, after which he was hospitalized for a few days, and that shortly thereafter he secured another position which continued for about 15 months, and that in 1939 he entered hospital for treatment and was operated on, action in admiralty for maintenance and cure instituted in October, 1939, was not barred by "laches." *Id.*

Recovery of maintenance and cure for illnesses on two occasions when connection between illness and service on vessel was established, could not be had when libel was not filed more than two years after the alleged injuries. *Dans-trup v. The Richmond P. Hobson*, D.C. N.Y.1954, 118 F.Supp. 453.

Where employer suffered no prejudice or detriment by employee's delay in bringing suit for maintenance and cure, suit was not barred by laches. *Miller v. Standard Oil Co.*, D.C.Ill.1952, 104 F. Supp. 946, affirmed 199 F.2d 457, certiorari denied 73 S.Ct. 836, 345 U.S. 945, 97 L. Ed. 1370, rehearing denied 73 S.Ct. 1113, 345 U.S. 971, 97 L.Ed. 1288.

109. Misconduct—Generally

Wilful misbehavior of seaman and not negligence is the standard prescribed by Shipowners' Liability Convention relieving shipowner of duty to provide maintenance and cure for injury or sickness due to wilful act, default or misbehavior. *Warren v. U. S.*, N.Y.1951, 71 S.Ct. 432, 340 U.S. 523, 95 L.Ed. 503.

The defenses of contributory negligence and assumption of risk and fellow servant doctrine may not be raised in action for maintenance and cure, but only some wilful misbehavior or deliberate act of indiscretion suffices to deprive seaman of his protection. *Id.*

Aside from gross misconduct or insubordination, what seaman is doing and why and how he sustained injury do not affect his right to maintenance and cure. *Farrell v. U. S.*, N.Y.1949, 69 S.Ct. 707, 336 U.S. 511, 93 L.Ed. 413.

In action for maintenance and cure, only some wilful misbehavior or deliberate act of indiscretion suffices to deprive seaman of his protection. *Aguilar v. Standard Oil Co. of New Jersey*, N.Y. 1943, 63 S.Ct. 930, 318 U.S. 724, 87 L.Ed. 1107. See, also, *Couts v. Erickson*, C.A. Fla.1957, 241 F.2d 499; *Murphy v. Light*, C.A.Fla.1955, 224 F.2d 944, certiorari denied 76 S.Ct. 348, 350 U.S. 960, 100 L.Ed. 834.

A shipowner's liability for maintenance and cure covers all injuries and ailments incurred without misconduct on seaman's

part amounting to ground for forfeiture, at least while he is on his ship, subject to call of duty as a seaman and earning wages as such. *Aguilar v. Standard Oil Co. of New Jersey*, N.Y.1943, 63 S.Ct. 930, 318 U.S. 724, 87 L.Ed. 1107.

Negligence of, or acts short of culpable misconduct by, sick or injured seaman will not relieve shipowner of responsibility for seaman's maintenance and cure. *Couts v. Erickson*, C.A.Fla. 1957, 241 F.2d 499.

The right of a seaman to maintenance and cure is denied only when illness or injury of seaman is the result of his own gross misconduct or deliberate indiscretion or disobedience of orders. *Haskell v. Socony Mobil Oil Co.*, C.A. Mass.1956, 237 F.2d 707.

Fault of seaman sufficient to forfeit right to maintenance and cure must be some positively vicious conduct such as wilful disobedience of orders. *Murphy v. Light*, C.A.Fla.1955, 224 F.2d 944, certiorari denied 76 S.Ct. 348, 350 U.S. 960, 100 L.Ed. 834.

While fault of seaman will forfeit right to maintenance and cure, it must be some positively vicious conduct such as wilful disobedience of orders. *Bentley v. Albatross S. S. Co.*, C.A.Pa.1953, 203 F.2d 270.

A seaman cannot recover for maintenance and cure where the injuries arise from his own gross and wilful misconduct. *Callan v. Cope*, C.C.A.Cal.1948, 165 F.2d 703.

The general rule of maritime law that a seaman who falls sick during a voyage is entitled to maintenance and cure does not apply in cases of illness arising from seaman's own vices or wilful misconduct. *Zambrano v. Moore-McCormack Lines*, C.C.A.N.Y.1942, 131 F.2d 537.

Generally, a vessel and her owner are liable for maintenance and cure if seaman falls sick or is wounded in service of ship but exception exists in case his disease or injury arises from his own vices or wilful misconduct. *Barlow v. Pan Atlantic S. S. Corporation*, C.C.A. N.Y.1939, 101 F.2d 697.

In absence of gross act of indiscretion or wilful misconduct, recovery for maintenance and cure should be allowed. *Sawyer v. California Tanker Co.*, D.C. N.J.1957, 147 F.Supp. 324.

Negligence or acts short of culpable misconduct by seaman will not relieve shipowner of responsibility for maintenance and cure and only some wilful misbehavior or deliberate act of indis-

cretion will deprive seaman of such protection. *McLeod v. Union Barge Line Co.*, D.C.Pa.1952, 107 F.Supp. 371, affirmed 204 F.2d 687.

Negligence or acts short of culpable misconduct on seaman's part will not relieve shipowner of responsibility for maintenance and cure, and only some wilful misbehavior or deliberate act of indiscretion deprives seaman of such protection. *Neville v. American Barge Line Co.*, D.C.Pa.1952, 105 F.Supp. 408.

Generally injured seaman is entitled to maintenance and cure in absence of gross acts of indiscretion and wilful misconduct or insubordination. *Rich v. North Atlantic & Gulf S. S. Co.*, D.C.Pa. 1949, 86 F.Supp. 990.

A seaman forfeits his right to the cure of injuries suffered even on shipboard if they are caused by his misconduct. *Id.*

A seaman falling ill or injured while in service is entitled to maintenance and cure at expense of vessel and her owner, provided that such illness or injury did not result from the seaman's own wilful misconduct. *Loverich v. Warner Co.*, D. C.Pa.1940, 36 F.Supp. 943, remanded on other grounds 118 F.2d 690, certiorari denied 61 S.Ct. 1104, 313 U.S. 577, 85 L.Ed. 1535.

The general rule that a vessel and her owner are liable for maintenance and cure to a seaman who falls sick or is wounded in the service of the vessel does not apply where his disease or injury arises from his own vices or wilful misconduct. *Brock v. Standard Oil Co. of New Jersey*, D.C.Pa.1940, 33 F.Supp. 353. See, also, *Fuentes v. Panama Canal Co.*, D.C.N.Y.1956, 148 F.Supp. 303; *Kable v. U. S.*, C.A.N.Y.1948, 169 F.2d 90.

Where injury to seaman, not on ship's business, is brought about by his gross misconduct, ship is relieved from liability for cure and maintenance. *The Quaker City*, D.C.Pa.1931, 1 F.Supp. 840.

An injured seaman is entitled to his expenses of maintenance and cure, if any, arising out of maritime injury irrespective of negligence or fault of shipowner, so long as he also is free of conduct which renders the placing of that responsibility on the shipowner contrary to the purposes for which the concept of maintenance and cure was designed, that is, so long as he is free of misconduct or indiscretion or of disobedience of orders and disregard of his seaman's duties. *Mullen v. Fitz Simons & Connell Dredge & Dock Co.*, D.C.M. 1950, 11 F.R.D. 348, affirmed in part and reversed in part on other grounds 191

F.2d 82, certiorari denied 72 S.Ct. 173, 342 U.S. 888, 96 L.Ed. 666.

Seamen injured in course of their employment are entitled under maritime law to maintenance and cure for period of disability, regardless of fault except where injury or disability results from seaman's wilful misconduct. *Petresen v. American President Lines*, Misc.1944, 48 N.Y.S.2d 757.

110. — Gross negligence

Fault of seaman sufficient to forfeit right to maintenance and cure must be some positively vicious conduct such as gross negligence. *Murphy v. Light, C.A. Fla.*1955, 224 F.2d 944, certiorari denied 76 S.Ct. 348, 350 U.S. 960, 100 L.Ed. 834.

While fault of seaman will forfeit right to maintenance and cure, it must be some positively vicious conduct such as gross negligence. *Bentley v. Albatross S. S. Co.*, C.A.Pa.1953, 203 F.2d 270.

Where seaman's conduct is so grossly negligent as to bar him from traditional right to maintenance and cure, and brings about a valid discharge from his employment, he cannot claim compensation for services he was prevented from rendering because of his own misconduct. *Lage v. U. S.*, D.C.N.Y.1950, 90 F. Supp. 583.

Proof that seaman, who was injured while on shore leave in port of Italy when he leaned over ledge or balcony of building holding onto rod apparently affixed to building and rod came off causing him to fall, failed to exercise precaution to determine whether rod was securely fastened, was insufficient to establish gross negligence depriving him of maintenance and cure. *Lipscomb v. Groves*, D.C.Pa.1949, 83 F.Supp. 402, affirmed 187 F.2d 40.

The element of willfulness or something akin to it must be found in one form or another to establish "gross negligence" depriving seaman injured in service of the ship of rights to maintenance and cure. *The Anna Howard Shaw*, D.C.N.Y.1947, 75 F.Supp. 210, rehearing denied 76 F.Supp. 735, affirmed in part and reversed in part on other grounds 179 F.2d 919, reversed on other grounds 71 S.Ct. 432, 340 U.S. 523, 95 L.Ed. 508.

Gross negligence of seaman injured in service of his ship deprives him of maintenance. *Id.*

111. — Intoxication

A seaman who shared one bottle of wine with two companions did not con-

sume sufficient wine to be under influence of intoxicating liquor when he sustained injury while on shore leave, and hence was not guilty of such wilful misbehavior as would deprive him of right of maintenance and cure. *Warren v. U. S.*, N.Y.1951, 71 S.Ct. 432, 340 U.S. 523, 95 L.Ed. 503.

Seaman's becoming intoxicated while on shore leave in foreign port on holiday was not act of wilful misconduct barring recovery of maintenance and cure for injuries sustained when he slumped in drunken stupor against unguarded hot radiator in vessel's recreation quarters. *Bentley v. Albatross S. S. Co.*, C.A.Pa.1953, 203 F.2d 270.

Where seaman's injuries occurred solely because of his intoxication, shipowner was under no duty to provide maintenance and cure, since the injuries were occasioned by seaman's own "misconduct" and were not incurred "in the service of the ship." *Barlow v. Pan Atlantic S. S. Corporation*, C.C.A.N.Y.1939, 101 F.2d 697.

Seaman whose wrist and hand were injured while engaged in drunken brawl with another member of crew could not recover maintenance and cure from shipowner. *Lortie v. American-Hawaiian S. S. Co.*, C.C.A.Cal.1935, 78 F.2d 819.

In seaman's action for maintenance and cure during time when he was hospitalized after having twice attempted suicide, and his condition was diagnosed as acute schizophrenic reaction, evidence did not show that seaman's illness was due solely to his own intoxication. *Fuentes v. Panama Canal Co.*, D.C.N.Y. 1956, 146 F.Supp. 303.

Where sole and proximate cause of seaman's injuries, whether sustained in recreation room aboard ship or ashore on leave, was his drunkenness, shipowner could not be held liable for maintenance and cure. *Victoria v. Luckenbach S. S. Co.*, D.C.N.Y.1956, 141 F.Supp. 149, affirmed 240 F.2d 349.

Where injuries sustained by seaman, when he passed out aboard a seaworthy ship and slumped against heated steam radiator, resulted solely from his intoxicated condition and from his own gross and wilful misconduct, and the ship and the steamship company furnished seaman adequate medical care after his accident, seaman was not entitled to recover maintenance and cure. *Bentley v. Albatross S. S. Co.*, D.C.Pa.1952, 104 F.Supp. 439.

Where it is clear that a seaman's injuries occurred solely because of his intoxication, they are occasioned by his

own misconduct and the shipowner is under no duty to provide maintenance and cure. *Brock v. Standard Oil Co. of New Jersey*, D.C.Pa.1940, 33 F.Supp. 353.

The mere fact that a seaman is drunk is not sufficient to defeat his right to maintenance and cure, but if his injury is due to a drunken fight his right thereto is forfeited. *The Quaker City*, D.C. Pa.1931, 1 F.Supp. 840.

112. — Venereal diseases

Shipowner was not obligated to provide for maintenance and cure of seaman who became infected with syphilis while visiting a house of prostitution in a South American port. *Zambrano v. Moore-McCormack Lines*, C.C.A.N.Y.1932, 131 F.2d 537.

"It is well settled that, while the vessel is liable for the cure and maintenance of a sailor who is taken ill while serving the vessel, she is not liable for such maintenance and cure when the disease was contracted from the indulgence by the sailor in case of gross indiscretion, or indulging his own vices." *The Conischiff*, D.C.Ala.1920, 268 F. 959, reversed on other grounds 270 F. 206.

A seaman is not entitled to be treated at the expense of the ship for a venereal disease contracted by him. *The Alector*, D.C.Va.1920, 263 F. 1007.

Chief steward was not entitled to maintenance on account of disability due to syphilis, since such disability was produced by his own misconduct as a proximate cause, though steward was at same time suffering from a groin condition, probably attributable to local infection resulting from heel injury sustained while employed on board ship. *Battice v. U. S.*, D.C.N.Y.1948, 79 F.Supp. 932.

113. — Particular cases

In action by seaman for maintenance and cure and for damages for injuries sustained in fracas with captain of vessel, evidence sustained finding that seaman's injuries were induced by his own wilful misconduct. *Watson v. Joshua Hendy Corp.*, C.A.N.Y.1957, 245 F.2d 463.

In action for wages, maintenance and cure by seaman employed in coastwise voyage on month-to-month basis, evidence compelled conclusion that seaman, when he disembarked during a month, informing captain to procure replacement for him, was not discharged for own misconduct but was ill, and that vessel did not have adequate medical facilities to care for him. *Rofer v. Head & Head, Inc.*, C.A.Fla.1955, 226 F.2d 927.

Note 113

In action in personam, against owner of vessel, to recover maintenance and cure claimed to have been necessary by assault or beating administered to libellant by seaman from other vessel which libellant's vessel was towing, evidence compelled conclusion that insulting and inflammatory language used by libellant to other seaman was not such wilful misconduct as to forfeit his right to maintenance and cure. *Murphy v. Light*, C.A.Fla.1955, 224 F.2d 944, certiorari denied 76 S.Ct. 348, 350 U.S. 960, 100 L.Ed. 834.

Where seaman on shore leave is injured on diving into four feet of water in swimming pool the seaman is not guilty of willful or gross misconduct. *Ellis v. American Hawaiian S. S. Co.*, C.C.A.Cal.1948, 165 F.2d 999.

A seaman injured by explosion while in vessel's employ is entitled to recover his maintenance and cure, notwithstanding his disobedience of master's order not to start refueling vessel until master has shut off engine, in absence of evidence that injury arose from such disobedience. *Callan v. Cope*, C.C.A.Cal.1948, 165 F.2d 703.

Act of chambermaid on board vessel in moving a dresser resulting in a sacroiliac sprain did not constitute such willful misbehavior as would relieve shipowner of liability for maintenance and cure. *McLeod v. Union Barge Line Co.*, D.C.Pa.1952, 107 F.Supp. 371, affirmed 204 F.2d 687.

Act of ship's laundress in using meat cleaver to open can of milk despite fact that can openers were available was negligence but was not such wilful misbehavior or deliberate indiscretion as would deprive laundress of maintenance and cure until maximum degree of improvement in her cut hand was reached. *Neville v. American Barge Line Co.*, D.C.Pa.1952, 105 F.Supp. 408.

Where ship's cook suffered foot fracture while ashore in foreign country on authorized leave and was guilty of no misconduct, cook was entitled to cure and maintenance at ship's expense. *Godbout v. Eastern S. S. Lines*, D.C.Mass. 1949, 82 F.Supp. 467.

Where seaman's fractured thumb was due to his own willful misconduct and there was no negligence on part of shipowner, seaman could not recover for maintenance and cure. *Brock v. Standard Oil Co. of New Jersey*, D.C.Pa.1940, 33 F.Supp. 353.

Where seaman disobeyed his orders, disregarded duty placed on him as a

deckhand to his ship, his shipmates, and to himself, and he suffered injury as a result, he disqualified himself from all rights to maintenance and cure. *Mullen v. Fitz Simons & Connell Dredge & Dock Co.*, D.C.Ill.1950, 11 F.R.D. 348, affirmed in part and reversed in part on other grounds 191 F.2d 82, certiorari denied 72 S.Ct. 173, 342 U.S. 888, 96 L.Ed. 666.

114. Release or settlement

In seaman's action against employer to recover compensation for injuries for negligent failure to provide adequate medical care, and for maintenance and cure, evidence supported finding that seaman executed release valid with respect to both causes of action. *Blake v. W. R. Chamberlin & Co.*, C.A.Cal. 1949, 176 F.2d 511.

Release of vessel operator by seaman from further liability for maintenance and cure is invalid if seaman did not have full understanding of his rights, and seamen who are induced to sign releases without benefit of counsel and who are unfamiliar with their legal rights are not bound by release. *Muruga v. U. S.*, C.A.N.Y.1949, 172 F.2d 318.

Evidence established that release executed by seaman at request of claims attorney for insurer could not stand because made by seaman without a full understanding of his rights. *U. S. v. Johnson*, C.C.A.Cal.1947, 160 F.2d 789, affirmed in part and reversed in part on other grounds 68 S.Ct. 391, 333 U.S. 46, 92 L.Ed. 468, motion denied 68 S.Ct. 788, 333 U.S. 865, 92 L.Ed. 1143.

Where injured seaman had distinct causes of action against wharf owner for negligence in maintaining wharf and against shipowner for maintenance and cure, seaman was not entitled to recover full damages in both actions, but, under rule that no one may recover compensatory damages more than once, seaman was relegated to recovery against shipowner of that part of his damage not represented in settlement made with wharf owner. *Muise v. Abbott*, C.C.A. Mass.1947, 160 F.2d 590. See, also, *McCarthy v. American Eastern Corp.*, D.C. Pa.1948, 81 F.Supp. 612, certiorari denied 70 S.Ct. 349, 338 U.S. 911, 94 L.Ed. 561.

Seaman who was injured by wharf owner's negligence in leaving an unguarded hole in wharf had a cause of action against wharf owner sounding in tort for negligent maintenance of premises, and a separate cause of action sounding in contract against shipowner for maintenance and cure, so that sea-

man's release of wharf owner could not inure to benefit of shipowner, since they were not joint tort-feasors. *Muise v. Abbott*, C.C.A.Mass.1947, 160 F.2d 590.

A release executed by seaman in favor of third person negligently injuring him was no defense against third party claim by seaman's employer against such third person for loss of services, maintenance and cure. *Jones v. Waterman S. S. Corp.*, C.C.A.Pa.1946, 155 F.2d 992.

Where seaman was injured on pier by the alleged negligence of a third person, employer and such third person were not joint tort-feasors, and seaman's release of allegedly negligent third person did not relieve seaman's employer of liability for maintenance, cure and wages. *Id.*

In seaman's action under the Jones Act, section 688 of this title, and for maintenance and cure, exclusion of seaman's release of all claims in exchange for promise of employer to make payments to seaman in accordance with schedule of payments in Massachusetts Workmen's Compensation Act, G.L.(Ter. Ed.) c. 152, §§ 34-36, and to furnish medical care and attention specified in that act was not prejudicial, where subsequent examination of insurance agent, who negotiated release, disclosed that agent did not fully inform seaman, who was without benefit of counsel, of his rights under the maritime law and said section 688 of this title. *Bay State Dredging & Contracting Co. v. Porter*, C.C.A.Mass.1946, 153 F.2d 827.

Where agent of employer's insurer obtained release from injured seaman, who was without benefit of counsel, whereby seaman released all claims in exchange for promise of employer to make payments to seaman in accordance with schedule of payments in Massachusetts Workmen's Compensation Act, G.L.(Ter. Ed.) c. 152, §§ 34-36, and to furnish medical care and attention specified in act without informing seaman that he had an unbeatable right of action under the maritime law for maintenance and cure, and that under the Jones Act, section 688 of this title, he had right of action for injury resulting from negligence in which recovery was not subject to statutory maximum limits, the release was invalid. *Id.*

Where seaman settled his claim for maintenance and cure with employer, and executed a complete release for past and future liability, and evidence established that at time of signing such release he was fully aware of chance he was taking that he might have some physical ail-

ment, such release was binding. *Fardy v. Roen Transp. Co.*, D.C.Mass.1956, 139 F.Supp. 167.

In suit for maintenance and cure, seaman's burden of separating out from cash settlement received from third party who alone had caused his injury, items which were not applicable to maintenance and cure and for which shipowner was not entitled to credit in computing his liability, did not require affirmative proof of specific dollar amounts, but only such proof as in any personal injury action would satisfy jury as to various elements of damages. *Gomes v. Eastern Gas and Fuel Associates*, D.C.Mass.1955, 132 F.Supp. 29.

Where seaman on way back to ship from shore leave was injured on public highway by automobile, there was no identity of seaman's cause of action against automobile driver for negligence and his cause against shipowner for maintenance and cure, and release by seaman of automobile owner, who alone caused him injury, did not operate as release of shipowner from liability for maintenance and cure, at least to extent that seaman's claim therefor was not represented in settlement with motorist. *Gomes v. Eastern Gas & Fuel Associates*, D.C.Mass.1954, 127 F.Supp. 435.

Where libellant and respondent bargained at arm's length, understood transaction, made no effort to overreach and concluded their dealings with what both believed to be a fair settlement of libellant's claim for maintenance and cure arising out of kidney ailment, release would not be set aside. *McGraw v. States S. S. Co.*, D.C.Cal.1953, 116 F.Supp. 446.

In suit for cure and maintenance, evidence showed that libellant had received a fair and adequate consideration for his release of all claims and that libellant had comprehended that he was signing a general release. *Bandy v. Keystone Shipping Co.*, D.C.Pa.1951, 100 F.Supp. 985.

A seaman, leaving ship before termination of its voyage to return on another ship to city where voyage started for purpose of obtaining medical treatment, was entitled to recover reasonable sum from shipowner for maintenance during time reasonably necessary to effect his cure, though he signed off ship and signed mutual release with master thereof. *Wahler v. Alaska S. S. Co.*, D.C.Wash.1950, 91 F.Supp. 261.

Evidence established that injured seaman had full notice of and full knowledge that he was signing a release for maintenance and cure for injuries and

Note 114

that there was no deception, overreaching, or coercion, notwithstanding he was without a lawyer to counsel him, where he was not hurried by respondents and could have obtained a lawyer if he wanted one. *The Francis Parkman*, D. C.N.Y.1948, 80 F.Supp. 22.

Seaman's release of maintenance and cure for injuries to his heel for the sum of \$1,090.69 was not shown to be inadequate so as to justify setting the release aside. *Id.*

An item for food included in an item for wages in an injured crew member's settlement of an action against a third party tort-feasor was an item of maintenance so as to reduce shipowner's liability to crew member for maintenance to extent of the food item. *Muise v. Abbott*, D.C.Mass.1945, 60 F.Supp. 561, affirmed 160 F.2d 590.

An injured crew member could not recover from shipowner cure and maintenance allowed crewman in a prior settlement of his action against a third party tort-feasor. *Id.*

115. Set-off

Where seaman was injured aboard vessel while in employ of respondent which made voluntary payments of workmen's compensation benefits, respondent was entitled to a set-off of the amounts paid by its insurance carrier against amount ultimately found to be due in seaman's action for maintenance and cure. *Chesler v. General Dredging Co.*, D.C.Fla. 1957, 150 F.Supp. 562.

116. Waiver

Where purser accepted cash settlement of his action against wharfowner for injuries sustained in a fall on the wharf and gave to wharfowner his covenant not to sue, expressly reserving therein any right against ship on which he was employed and its owner, purser did not thereby "waive" his right to proceed against ship and owner for cure and maintenance. *Gomes v. Pereira*, D.C. Mass.1941, 42 F.Supp. 328.

117. Judicial notice

Courts take judicial notice of the marine hospital service where seamen may be treated at minimum expense, and limit recovery by a seaman taken ill on a voyage to expense of such maintenance and cure as is not at the disposal of the seaman through recourse to marine hospital service. *Vitco v. Joncich*, D.C.Cal.1955, 130 F.Supp. 945, affirmed 234 F.2d 161.

118. Burden of proof

Seaman has the burden of sustaining by evidence his claim for maintenance and cure. *Donovan v. Esso Shipping Co.*, D.C.N.J.1957, 152 F.Supp. 347.

In suit for maintenance and cure by seaman who was incapacitated by injury received aboard defendant's ship, wherein it was shown seaman had already received jury verdict which allegedly included his lost earnings for period in question, defendant had burden of proving payment of wages had already been made to seaman and the extent of such payment. *Stendae v. The Neptune*, D.C.Mass.1955, 135 F.Supp. 801.

Burden is on seaman to sustain his libel against steamship for cure and maintenance. *The San Antonio*, D.C.Pa. 1932, 1 F.Supp. 221.

In admiralty, if defendant ship owner believes that amounts actually expended for maintenance and cure are unreasonable, ship owner may offer rebuttal proof, common law rule placing burden on seaman of producing independent proof of reasonableness of expenditures for food, lodging, medical treatment, etc., being inapplicable. *Socony-Vacuum Oil Co. v. Aderhold*, 1951, 240 S.W.2d 751, 150 Tex. 292.

119. — Release or settlement

In action for maintenance and cure and for damages by reason of unseaworthiness of vessel, and for damages under the Jones Act, section 688 of this title, by reason of negligence, defendant had burden of showing that release relied upon was executed by seaman freely, understandingly, and without coercion. *German v. Carnegie-Illinois Steel Corp.*, C.A.Pa.1948, 169 F.2d 715.

A release executed by a seaman must be given careful scrutiny, and burden is upon the one setting up seaman's release to show that it was executed freely, without deception or coercion and that it was made by seaman with full understanding of his rights, and adequacy of consideration, nature of medical and legal advice available to seamen at time of signing release are relevant to an appraisal of his understanding of his rights. *U. S. v. Johnson*, C.C.A.Cal.1947, 160 F.2d 789, affirmed in part and reversed in part on other grounds 68 S. Ct. 391, 333 U.S. 46, 92 L.Ed. 468, motion denied 68 S.Ct. 788, 333 U.S. 865, 92 L. Ed. 1143. See, also, *The Francis Parkman*, D.C.N.Y., 80 F.Supp. 22.

One who sets up a seaman's release has burden of showing that release was

executed freely, without deception or coercion, and that it was made by seaman with full understanding of his rights, and adequacy of consideration and nature of medical and legal advice available to seaman at time of signing release are relevant. *Bay State Dredging & Contracting Co. v. Porter, C.C.A. Mass.1946, 153 F.2d 827.*

Burden of proof was upon seaman seeking recovery against shipowner for maintenance and cure, to separate items of damage, compensated for by seaman's settlement with automobile owner who alone caused seaman's injury. *Gomes v. Eastern Gas & Fuel Associates, D.C. Mass.1954, 127 F.Supp. 435.*

In action for maintenance and cure wherein respondent, by way of defense, relied upon release of all claims and demands executed by libellant upon receipt of \$600, respondent had burden of showing that libellant acted freely and with full understanding of his rights when he signed the release in consideration of the money paid him. *McGraw v. States S. S. Co., D.C.Cal.1953, 116 F.Supp. 446.*

120. Evidence—Admissibility

Act of a master, on American vessel, in preparing and filing a report with the Coast Guard as to serious injuries sustained by seaman aboard his vessel, in compliance with Coast Guard regulations, was an act within the scope of the master's authority, and was an admission admissible against shipowners in an action by seaman for damages and maintenance and cure. *Cox v. Esso Shipping Co., C.A.Tex.1957, 247 F.2d 629.*

Response of a master to printed inquiry on a marine accident report form as to whether injury was due to own neglect, stating, "Yes, partly. Used Hook instead of shackles in block." was not either enough of an opinion or the kind to destroy admissibility of such declaration as an admission, on theory that such admission was a mere expression of opinion. *Id.*

Oral arrangements between a seaman-fisherman, subsequently injured and suing for maintenance, etc., and the master of a fishing vessel for employment to fish on shares, were within the principle that oral evidence is admissible to supply omissions in a written contract incomplete on its face, and hence, where subsequent written shipping articles were silent as to duration of the employment, it could be shown by parol evidence. *Luksch v. Misetch, C.C.A. Cal.1944, 140 F.2d 812, certiorari denied 64 S.Ct. 1280, 322 U.S. 761, 88 L.Ed. 1589.*

In action by seaman for maintenance and cure predicated upon theory that coronary thrombosis was the result of pneumonia seaman suffered as result of exposure to moisture while aboard sea-going tug, exclusion of testimony of heart specialist by whom seaman attempted to show connection between the pneumonia and coronary thrombosis was reversible error. *Hern v. Moran Towing & Transportation Co., C.C.A.N.Y. 1943, 138 F.2d 900.*

In seaman's libel for injuries and for maintenance and cure, error, if any, in admitting hospital record and seaman's signed statement that neither vessel nor its crew was to blame for seaman's fall was harmless, where trial judge's opinion stated that regardless of such documents, his finding would have been the same. *Barlow v. Pan Atlantic S. S. Corporation, C.C.A.N.Y.1939, 101 F.2d 697.*

121. — Weight and sufficiency generally

In action by seaman for maintenance and cure evidence was sufficient to support finding that there was sufficient space between ladder attached to foremast and edge of foremast table for libellant to ascend ladder on ship safely. *Wilson v. U. S., C.A.N.Y.1956, 229 F.2d 277.*

In action by seaman for maintenance and cure record disclosed findings of trial court were not clearly erroneous and that such findings supported conclusions, based thereon, that seaman had not satisfied burden of proving negligence on part of respondent and unseaworthiness of vessel. *Id.*

In action by fisherman for maintenance and cure, as to injuries sustained while employed aboard defendant's fishing vessel, court was not required to believe undisputed testimony of doctor who treated fisherman after his discharge from hospital, and could properly give greater credence to prior findings of hospital physicians. *Stanovich v. Jurlin, C.A.Cal.1955, 227 F.2d 245.*

In action for maintenance and cure, evidence sustained findings that injury sustained by libellant while employed as a chambermaid on respondent's vessel was a sacroiliac sprain, that when libellant returned to work she had reached the point in recovery where care and further treatment would not benefit her and that neither physical nor mental condition later complained of by libellant and for which she sought additional award of maintenance and cure had any causal relation to injury sus-

Note 121

tained by her on shipboard. *McLeod v. Union Barge Line Co.*, C.A.Pa.1953, 204 F.2d 687.

In libel in admiralty by Greek seamen against master, owners and operating agents of Greek steamship for maintenance and cure, evidence established that medical attention and hospitalization for such seamen had been paid for by employer and that seamen had been paid in full all maintenance to which they were entitled. *Livanos v. Pateras*, C.A.Va.1951, 192 F.2d 319, certiorari denied 72 S.Ct. 1042, 343 U.S. 950, 96 L.Ed. 1352.

Evidence established that wiper in engine room of vessel received all maintenance and cure to which he was entitled. *Lake v. Standard Fruit & S. S. Co.*, C.A.N.Y.1950, 185 F.2d 354.

In action for maintenance and cure, evidence sustained finding that plaintiff suffered back injuries in accidental fall on deck of barge. *Murphy v. American Barge Line Co.*, C.C.A.Pa.1948, 169 F.2d 61, certiorari denied 69 S.Ct. 133, 335 U.S. 859, 94 L.Ed. 406.

Finding that seaman awarded maintenance and cure was honestly sick and not malingering was sustained by evidence. *Virgin v. U. S.*, C.C.A.Md.1947, 165 F.2d 81, certiorari denied 68 S.Ct. 1341, 334 U.S. 834, 92 L.Ed. 1760.

Evidence showed that a seaman-fisherman, injured in May during the tuna fishing season, and suing for maintenance and wages, was employed to fish on shares for the tuna season only, and not for that season and the following sardine season. *Luksich v. Missetich*, C.C.A.Cal.1944, 140 F.2d 812, certiorari denied 64 S.Ct. 1280, 322 U.S. 761, 88 L.Ed. 1539.

Charges that a ship did not give a seaman with a broken leg prompt and proper care, and that it was responsible for nonsuccess of his treatment in a hospital, was not sustained by the evidence. *The Pochasset*, C.C.A.R.I.1924, 295 F. 6.

On libel against a ship for injuries to a seaman, evidence that after two operations his broken leg did not properly unite was sufficient to show that a further operation was not likely to effect a cure or substantial improvement, and that the ship's duty had been performed, especially in view of evidence that seaman's own refusal to remain quiet, etc., was in part, at least, the cause thereof. *Id.*

In cook's action for maintenance and cure against owners of vessel, evidence

failed to disclose that master receiving 5% of proceeds from sale of fish catch for running vessel, had in fact chartered vessel. *Olsen v. The Patricia Ann*, D.C.N.Y.1957, 152 F.Supp. 315.

Seaman could not recover for maintenance without proof of expenses incurred or obligations created for such maintenance. *Dodd v. The Peggy G.*, D.C.Ala.1957, 149 F.Supp. 823.

Seaman could not recover damages for failure to pay maintenance without proof that he had sustained injury by reason of such failure. *Id.*

In action for maintenance and cure, evidence established that plaintiff had in fact been injured, albeit from his own negligence, and that he had suffered from gastritis attack, and would not sustain defendant's contention that plaintiff's illness had been caused solely by his own wilful misconduct in over-indulging in liquor in violation of ship rules, but required finding that defendant's medical treatment during voyage had been in accord with accepted standards of care. *Sawyer v. California Tanker Co.*, D.C.N.J.1957, 147 F.Supp. 324.

In suit for maintenance and cure by seaman, who was incapacitated from June 10 to August 10 by reason of injury received on board defendant's ship, and who lost \$1,057 in wages during that period, evidence that seaman had been awarded prior jury verdict of \$1,600 for loss of earnings and pain and suffering was plainly inadequate to show that seaman had been compensated for all wages lost by him, even though there was substantial evidence of seaman's contributory negligence which jury was required to take into consideration in proportioning the damages. *Stendze v. The Neptune*, D.C.Mass.1955, 135 F.Supp. 801.

In action by seaman against merchant vessel owner for maintenance and cure, evidence, which revealed that seaman waited from August 7th to October 9th in hope that his self-administered treatment would prove effective before he returned to hospital for treatment, was not sufficient to establish forfeiture of seaman's right to maintenance and cure on and after August 7th. *Gardner v. Sinclair Refining Co.*, D.C.Pa.1955, 129 F.Supp. 225, affirmed 227 F.2d 958.

Even if libellant continued to suffer pain and inconvenience in performance of his work from the alleged injury, he would not be entitled to cure and maintenance, until he produced some evidence that his condition could be improved by medical or surgical attention. *Shaffer*

v. Seas Shipping Co., D.C.Pa.1954, 127 F. Supp. 426.

In seaman's action for maintenance, evidence established that seaman was not aware of any persistent effects of a previous condition for which he had undergone treatment and that seaman, when accepting employment, in good faith believed he could perform the services which would ordinarily be required of him. *Saar v. Sun Oil Co.*, D.C.Pa.1954, 124 F.Supp. 684.

In proceedings on libel by seaman for maintenance, evidence failed to establish that seaman's diagnosed disability, pruritus ani, was of psychogenic origin. *Id.*

A seaman cannot recover for maintenance or cure without proof of expenses incurred or obligation created for such maintenance. *Ballard v. Alcoa S. S. Co.*, D.C.Ala.1954, 122 F.Supp. 10.

In action by injured seaman for maintenance and cure, evidence was insufficient to support a finding as to cost of extra nursing facilities and special food which marine hospital was allegedly unable to supply even if an award therefor could be made. *Mosseller v. U. S.*, D.C.N.Y.1947, 73 F.Supp. 827.

The testimony of medical experts that seaman for many years had pulmonary tuberculosis in an inactive form, and that there was no activation of such inactive condition when he became ill and left ship, did not establish that when he subsequently left Marine Hospital without consent of hospital authorities he was in such condition as to require medical aid so as to entitle him to maintenance and cure. *Bailey v. City of New York*, D.C.N.Y.1944, 55 F.Supp. 699, affirmed 153 F.2d 427.

122. Questions of law or fact

Whether sickness or injury to seaman arising during voyage creates an obligation for maintenance and cure, irrespective of subsequent shore employment, raises question of fact which should be defined in court's charge and submitted in appropriate special issues. *Socony-Vacuum Oil Co. v. Aderheld*, 1951, 240 S.W.2d 751, 150 Tex. 292.

Where evidence of injured seaman's shore employment was uncontroverted, and no fact issue requiring submission was raised in action for maintenance and cure, a question of law was presented. *Id.*

123. Jury—Trial by

Seaman was entitled to a jury trial with respect to his claim for maintenance

and cure on account of injuries sustained in the service of defendant's vessel, but where the evidence was insufficient to support an award, discharge of jury was immaterial and defendant was entitled to judgment. *Donovan v. Esso Shipping Co.*, D.C.N.J.1957, 152 F. Supp. 347.

A seaman, suing under the general maritime law for maintenance and cure is not entitled to a jury trial. *The Progress*, D.C.Wash.1938, 21 F.Supp. 572.

124. Questions for

In injured seaman's maintenance action against vessel owner asserting that seaman was barred from recovery by reason of having broken his warranty of fitness for sea service because he had a physical disability which incapacitated him from performing heavy manual labor, evidence raised question for jury as to whether seaman knowingly concealed prior abnormal condition from owner. *Rosenquist v. Isthmian S. S. Co.*, C.A.N.Y.1953, 205 F.2d 486.

Whether motor vessel captain's giving of hospital ticket, money, and bus ticket to woman becoming mentally ill on vessel while employed thereon as maid was adequate or insufficient execution of vessel's duty to furnish her maintenance and cure was question for jury. *Spellman v. American Barge Line Co.*, C.A.Pa.1949, 176 F.2d 716.

In seaman's action for maintenance and cure, whether a release, including not only seaman's claim for maintenance and cure, but also pain and suffering, loss of wages, and future loss of earnings due to his total and permanent disability, was executed by seaman freely, understandingly, and without coercion, was properly submitted to jury. *German v. Carnegie-Illinois Steel Corp.*, C.A.Pa.1948, 169 F.2d 715.

In action by seamen under Jones Act, section 683 of this title, for negligence in causing seaman to contract poliomyelitis and under the general maritime law for maintenance and cure, whether seaman was entitled to anything for maintenance and cure was for the jury, in view of conflict in the testimony regarding possible effectiveness of further treatment. *McAllister v. Cosmopolitan Shipping Co., Inc.*, C.C.A.N.Y.1948, 169 F.2d 4, reversed on other grounds 69 S.Ct. 1317, 337 U.S. 783, 93 L.Ed. 1692, rehearing denied 70 S.Ct. 32, 338 U.S. 839, 94 L.Ed. 513.

In action by seaman for maintenance whether seaman should forfeit maintenance because of refusal to submit to

Note 124

needed hospital care after he knew or should have known that hospital care would improve his condition, was for jury under the evidence. *Aldrich v. Luckenbach S. S. Co.*, D.C.N.Y.1949, 87 F.Supp. 703.

In an action by a seaman who fell from a mast for negligent treatment of a fracture of the greater tuberosity of the humerus, but which fracture the ship's physician could not discover, whether the master was warranted in refusing to put the seaman ashore at a hospital where an X-ray photograph could be taken, and whether he relied in good faith on the advice of the physician, was for the jury. *Leone v. Booth S. S. Co.*, 1021, 133 N.E. 439, 232 N.Y. 183.

In a seaman's action against a steamship company for negligent treatment of a broken arm received in the course of his duties, whether the master's interference in the treatment of the seaman, by refusing to permit him to go ashore where an X-ray photograph could be taken, and requiring him to work, resulted in injury, was for the jury. *Id.*

125. Instructions

In action for maintenance and cure of woman becoming mentally ill on defendant's vessel while employed thereon as maid, charge was erroneous as equivalent to binding instruction for defendant on jury questions whether defendant's duty to furnish maintenance and cure was discharged by furnishing plaintiff a hospital ticket. *Spellman v. American Barge Line Co.*, C.A.Pa.1949, 176 F.2d 716.

In action for maintenance and cure of woman becoming mentally ill on defendant's vessel while employed thereon as maid and for damages because of captain's alleged negligence, erroneous charge that captain fulfilled vessel's obligation to furnish maintenance and cure by giving plaintiff a hospital ticket, money and bus ticket and having her conducted to bus terminal for trip to hospital was also erroneous as requiring finding for defendant on jury questions of captain's incompetency and negligence. *Id.*

In seaman's action against employer for personal injuries allegedly sustained as result of negligent failure to provide adequate medical care, and for maintenance and cure, instructions relative to validity of release fully apprised jury of seaman's rights. *Blake v. W. R. Chamberlin & Co.*, C.A.Cal.1949, 176 F.2d 511.

Where deck hand had been seriously injured in course of employment, on deck hand's count for maintenance and cure, trial court properly denied motion for directed verdict and properly informed jury that only issue on such count was amount of recovery. *Bay State Dredging & Contracting Co. v. Porter*, C.C.A.Mass.1946, 153 F.2d 827.

In seaman's action for maintenance and cure, employer could not complain on appeal that instructions set no time limit on period for which recovery could be had where employer made no request for further instructions. *Moyle v. National Petroleum Transport Corp.*, C.C.A.N.Y.1945, 150 F.2d 840.

In seaman's action for maintenance and cure, brought nearly 5½ years after he first suffered illness from asthma, instructions leaving to jury what was fair time within which allowance might be made were proper. *Id.*

126. Verdict

In action by an injured seaman for maintenance and cure, verdict was properly directed for the shipowner where there was no proof that plaintiff had spent anything for such maintenance and cure. *Stankiewicz v. United Fruit S. S. Corp.*, C.A.N.Y.1956, 229 F.2d 580.

Jury's verdict for plaintiff in injured seaman's action for maintenance and cure must be deemed conclusive in plaintiff's favor on fact questions, submitted on disputed testimony, as to whether plaintiff was injured during voyage in course of his employment by defendant. *Sickner v. Great Lakes Transit Corporation*, D.C.N.Y.1936, 17 F. Supp. 330.

Statement of counsel for defendant in injured seaman's action for maintenance and cure, that question was one of amount and that he withdrew motion to dismiss action and direct verdict for defendant as to maintenance and cure, if shown by plaintiff, was tantamount to consent to leave questions arising on such cause of action to jury, so as to require denial of motion to set aside verdict for plaintiff on ground that he refused hospitalization tendered by defendant. *Id.*

127. Summary judgment

In action by seaman under this section and for maintenance and care, triable issue of fact as to whether readmission of seaman to hospital had any relation to injuries sustained on defendant's vessel precluded partial summary judgment for seaman on cause of action

for maintenance. *Aleman v. Grace Line*, D.C.N.Y.1955, 137 F.Supp. 375.

128. Liability established

A shipowner is liable to seaman becoming sick during voyage for maintenance and cure. *Spellman v. American Barge Line Co.*, C.A.Pa.1949, 176 F.2d 718.

Under the general maritime law, a seaman who fell and sustained a sacro-iliac sprain when carrying out an order to take bilge soundings was entitled to maintenance and cure. *Smith v. Lykes Brothers-Ripley S. S. Co.*, C.C.A.La.1939, 105 F.2d 604, certiorari denied 60 S.Ct. 141, 308 U.S. 604, 84 L.Ed. 505.

Cause of suit against vessel for maintenance and cure was erroneously dismissed though liability was secondary to that of stevedore. *The Jefferson Myers*, C.C.A.N.Y.1930, 45 F.2d 162.

Operator of tug was secondarily liable for maintenance and cure of seaman injured by collision notwithstanding seaman's recovery from owner of other boat, solely at fault. *Seely v. City of New York*, C.C.A.N.Y.1928, 24 F.2d 412.

Seaman, who sustained injury while at sea, was entitled to maintenance and cure. *Morris v. U. S.*, C.C.A.N.Y.1924, 3 F.2d 588. See, also, *Sickner v. Great Lakes Transit Corporation*, D.C.N.Y.1936, 17 F.Supp. 330.

Captain's error of judgment in believing that injured seaman was shamming did not relieve ship from responsibility of providing maintenance and care. *Morris v. U. S.*, C.C.A.N.Y.1924, 3 F.2d 588.

A steamship which lay at a port for three hours after the severe injury of a seaman was liable for failing to call a physician until another port was reached, eleven hours after the injury. *The Governor*, D.C.Cal.1915, 230 F. 857.

Seaman was entitled to maintenance and cure for gastroduodenitis manifested while member of crew of vessel. *Sims v. U. S. War Shipping Administration*, D.C.Pa.1950, 91 F.Supp. 90, reversed on other grounds 186 F.2d 972, certiorari denied 72 S.Ct. 31, 342 U.S. 816, 96 L.Ed. 617.

Where seaman, as result of accident, received a serious aggravation of an existing physical condition while in service of ship, he was entitled to maintenance and cure. *Bekin v. U. S.*, D.C.N.Y.1949, 85 F.Supp. 907.

129. — Evidence

Evidence of facts, found by district court, that ship owner negligently failed

to provide vessel with adequate medicine chest and reasonably sufficient supply of penicillin and sulfa drugs, replenish chest, administer such drugs to crew member suffering from infected finger, obtain medical advice by radio, and put in at nearby port and hospitalize him, as requested, supported judgment awarding him damages against owner. *Joshua Hendy Corp. v. Clavel*, C.A.Cal.1951, 189 F.2d 37.

Evidence supported finding that disability of seaman from complications which followed emergency operation for intestinal obstruction caused by earlier splenectomy was sustained while in service of vessel and not by reason of seaman's own vice or misconduct, so that seaman was entitled to maintenance and cure. *Lipscomb v. Groves*, C.A.Pa. 1951, 187 F.2d 40.

Evidence showed that woman employed as maid on barge line company's motor vessel became mentally ill thereon during voyage, so as to entitle her to maintenance and cure. *Spellman v. American Barge Line Co.*, C.A.Pa.1949, 176 F.2d 716.

A finding that a shipowner did not furnish a seaman injured in its service with proper medical attention and care was sustained by the evidence, and the court may make an allowance to the seaman for expenses of his care and for loss of time after the expiration of his term of service. *North Alaska Salmon Co. v. Larsen*, Cal.1915, 220 F. 93, 135 C. C.A. 661.

In action for maintenance and cure, wherein there was a dispute as to whether the important injury had occurred on board ship, or whether the plaintiff had suffered it ashore as a result of being "beat up" while drunk, evidence was insufficient to sustain contention that injury had been caused by such wilful misconduct as to bar recovery. *Nunes v. Farrell Lines*, D.C.Mass. 1955, 129 F.Supp. 147, affirmed in part, reversed in part on other grounds 227 F.2d 619.

Evidence established that injury sustained by claimant, who slipped on floor of galley sustaining injury to his back, caused aggravation of a pre-existing condition for which claimant was entitled to maintenance and cure until maximum cure possible was effected, although injury was not caused by an unseaworthy condition of vessel or by negligence on part of owner. *Petition of Feldman*, D.C.N.Y.1953, 120 F.Supp. 740.

Evidence established that chambermaid had been injured while in service

Note 129

of shipowner and on vessel owned and operated by it and while she was employed thereon as seaman and member of crew, and therefore she was entitled to recover maintenance and cure. *Shannon v. Union Barge Line Corp.*, D.C.Pa. 1951, 96 F.Supp. 916.

Evidence that injury received by seaman aboard ship required medical attention and care warranted recovery of costs of maintenance and cure. *Broadbent v. U. S. War Shipping Administration*, D.C.Pa.1947, 73 F.Supp. 612.

In *Hbel* by seaman for maintenance and cure evidence showed that he was entitled to decree therefor. *Bovich v. U. S.*, D.C.Cal.1947, 70 F.Supp. 482, affirmed 163 F.2d 750.

Evidence established that master of vessel knew or with due diligence should have known of dangerous character of member of crew who assaulted another and should, at least, have taken effective means to protect crew, and hence United States as owner and operator of vessel was liable to assaulted crew member for indemnity and maintenance and cure. *Hong v. U. S.*, D.C.N.Y.1945, 59 F.Supp. 794.

Evidence warranted seaman's recovery from steamship line for maintenance and cure as result of contracting trachoma. *Penker v. Dollar S. S. Line, Inc.*, D.C.N.Y. 1934, 8 F.Supp. 390.

130. Liability not established

Even if master should have done more than merely to take away seaman's glasses and send him below when it became obvious that he was in a mentally disturbed state, inconsequential damage resulting from cut wrist allegedly caused by such negligence was de minimis and there could be no recovery. *Perez v. Suwanee S. S. Co.*, C.A.N.Y.1956, 239 F.2d 180.

In action by fisherman for maintenance and cure as to injuries sustained while employed aboard defendant's fishing vessel, where court found that doctor's treatment of fisherman after his discharge from hospital was only "palliative" in nature, and term was undoubtedly used in sense of "to ease without curing", court properly denied recovery for cost of such treatment. *Stanovich v. Jurlin*, C.A.Cal.1955, 227 F.2d 245.

Chambermaid, having recovered from injury sustained while employed on board respondent's vessel to the extent that care and further treatment would not benefit her, was not entitled to maintenance and cure for physical or mental

condition later complained of, having no causal relation to such injury. *McLeod v. Union Barge Line Co.*, C.A.Pa.1953, 204 F.2d 687.

Where seaman except for a negligible period was hospitalized at the expense of owner of vessel until he resumed his full duties on board the vessel, owner of vessel could not be held liable for "maintenance and cure" on account of alleged disability resulting from illness contracted while on board vessel necessitating subsequent expenditures by seaman for medical treatment and medicine to enable him to perform the duties incident to his subsequent employments. *Inter Ocean S. S. Co. v. Behrendsen*, C. C.A.Ohio 1942, 128 F.2d 506.

Disabled seaman who was given hospitalization, had never been refused or denied hospitalization, and had not expended any sum for maintenance and cure could not recover of shipowner for maintenance and cure. *Field v. Waterman S. S. Corporation*, C.C.A.Ala.1939, 104 F.2d 849.

By tendering hospital certificate to seaman bruising heel aboard ship, when seaman left ship, master performed vessel's obligation regarding cure. *June v. Pan-American Petroleum & Transport Co.*, C.C.A.La.1928, 25 F.2d 457.

Where libellant had worked rather steadily ever since he left hospital, and it did not appear that he was compelled, because of injury to turn down any job available to him, he was not entitled to anything for maintenance nor anything for cure. *Shaffer v. Seas Shipping Co.*, D.C.Pa.1954, 127 F.Supp. 426.

Seaman was not entitled to maintenance because of back injury for period he spent as an in-patient at hospital for hernia operation, which was in no way connected with back injury, nor for time when fusion operation was being performed while he was an in-patient, nor for time when he sold insurance and operated a cafe. *Baun v. Hudson*, D.C. Alaska 1952, 108 F.Supp. 523.

Injured seaman was not entitled to any maintenance and cure during period of hospitalization at no expense to herself. *McLeod v. Union Barge Line Co.*, D.C.Pa.1952, 107 F.Supp. 371, affirmed 204 F.2d 687.

Where seaman injured in fall received treatment and maintenance at hospital from November 17 until ensuing February 24, when he was discharged to out patient treatment, and had additional treatments before May 1, when he returned to his former employment, he

had received all the "maintenance and cure" to which he was entitled. *Lynskey v. Great Lakes Transit Corporation*, D.C.N.Y.1942, 42 F.Supp. 816.

Where two members of crew were assaulted by two other members but both assaulted members stood their regular watches and received their full pay to end of voyage, and were given medical assistance at end of voyage but neglected to continue treatment at hospital, maintenance and cure could not be awarded. *Wilcox v. U. S.*, D.C.N.Y.1940, 32 F.Supp. 947.

Engineer on steamship who received attention at marine hospital and expended nothing for cure could not recover for maintenance and cure in libel for injuries. *Fleischman v. U. S.*, D.C.N.Y. 1934, 7 F.Supp. 373.

131. — Evidence

In action for wages, maintenance and cure by seaman who was suffering from emotional immaturity and who had paranoid tendencies and who had not complied with public health service's suggestion that he receive further psychiatric treatment at his own expense, evidence supported trial court's findings that owners of vessel could not be required to furnish him with maintenance and cure for such disorders. *Rofer v. Head & Head, Inc.*, C.A.Fla.1955, 226 F. 2d 927.

Award for maintenance and cure of injured seaman based solely on future rehabilitation program was without support in the evidence, where expert medical witness expressed doubt as to whether it would effect any improvement, seaman had shown no inclination to undertake rehabilitation program and evidence indicated that further medication would be valueless. *Buch v. U. S.*, C.A.N.Y.1955, 220 F.2d 165.

In seaman's libel in admiralty for damages for aggravation of illness, contracted on board respondent's ship, evidence was insufficient to establish that master and officers of ship had failed to give libellant proper medical care, which would have prevented him from becoming deaf as sequela of cerebro-spinal meningitis. *Russo v. Standard Oil Co. of Cal.*, C.A.N.Y.1952, 195 F.2d 521.

Finding that seaman without the consent and against the advice of attending physicians left marine hospitals was sustained by substantial evidence and barred recovery for maintenance and care. *Tawada v. U. S.*, C.C.A.Cal.1947, 162 F.2d 615.

Where evidence supported finding that libellant sustained no injury on board ship, that illness was not caused nor contributed to by unseaworthiness of ship or negligence of owner, that libellant was afforded all proper and reasonable care and medical attention, that master's discretion in refusing to transfer libellant to another vessel was properly exercised, that libellant's condition was syphilitic, and that of his own volition he had left marine hospitals at which he was treated, no recovery for maintenance and cure could be had. *The Gateway City*, C.C.A.La.1939, 103 F.2d 987.

Evidence was insufficient to establish liability of ship to injured seaman on theory that his injuries were aggravated by failure to provide prompt, adequate and proper medical treatment. *Barlow v. Pan Atlantic S. S. Corporation*, C.C.A. N.Y.1939, 101 F.2d 697.

That seaman's death from tuberculosis resulted from exposure in course of employment, or owner's failure to furnish medical services, was not proved. *Wiley v. Alaska Packers' Ass'n*, C.C.A.Cal. 1927, 18 F.2d 8.

In libel by seaman against owner for maintenance and cure, evidence was insufficient to prove that illness from thrombosis was due to injury or maltreatment received by seaman while on shipboard. *Morris v. U. S.*, C.C.A.N.Y. 1924, 3 F.2d 538.

Evidence was insufficient to justify award of maintenance and cure, in absence of evidence to support findings that defendant had not fully discharged obligation to provide maintenance and cure on account of injuries sustained by seaman in the service of defendant's vessel or that further treatment would be likely to effect a diminution of the permanent disability resulting from such injuries, or as to what particular kind of treatment, extending over what aggregate period of time and involving what probable cost, would probably be effective. *Donovan v. Esso Shipping Co.*, D.C.N.J.1957, 152 F.Supp. 347.

In seaman's suit for damages and for maintenance and cure on account of tuberculosis alleged to have been contracted and aggravated because of negligence of steamship company and unseaworthy condition of its vessels, evidence failed to disclose that presence of seaman who had committed a murderous assault upon another either caused or aggravated tubercular condition of libellant. *Quintin v. Sprague S. S. Co.*, D.C.N.Y.1957, 149 F.Supp. 226.

In seaman's suit for damages and for maintenance and cure on account of tubercular condition alleged to have been contracted and aggravated because of negligence of steamship company and unseaworthiness of its vessels, evidence failed to disclose that seaman contracted tuberculosis in course of employment aboard first two vessels owned by company or that any pre-existing infection was aggravated by living or other conditions on either of the vessels. *Id.*

In seaman's action for damages and for maintenance and cure on account of tuberculosis alleged to have been contracted and aggravated by negligence of steamship company and unseaworthiness of its vessel, although seaman concededly fell ill with tuberculosis while serving on company's vessel evidence failed to disclose that tubercular condition was either due to negligence of owner or unseaworthiness of vessel. *Id.*

A seaman contracting a kidney ailment was not entitled to recover of a shipowner for maintenance and cure where he failed to carry the burden of proving what, if any, periods of outpatient care were necessary or would have been incurred if marine hospital facilities had been utilized. *Dobbs v. Lykes Bros. S. S. Co.*, D.C.La.1956, 140 F.Supp. 732, affirmed 243 F.2d 55.

In seaman's action for maintenance and cure, evidence failed to establish that pre-existing emotional illness which required treatment four months after seaman left vessel was caused or aggravated by occurrences on board vessel, or that such illness manifested itself while seaman was aboard. *Brahms v. Moore-McCormack Lines*, D.C.N.Y.1955, 133 F.Supp. 283.

In action by seaman for maintenance and cure, evidence established that seaman who in 1944 suffered a recurrence of an earlier manifestation of tuberculosis had attained maximum recovery by June, 1949, so that obligation of owner of vessel had been discharged prior to filing of action in November, 1949. *Renner v. U. S.*, D.C.N.Y.1955, 132 F.Supp. 810.

In proceeding on a libel against United States for injuries sustained by chief steward when allegedly broken slats on floor of meat box of vessel caused him to fall, evidence established that chief steward, who had been unemployed for a period of 27 months following alleged injury, had had all the medical and hospital care he needed without cost to him and was not entitled to recover for

"cure". *North v. U. S.*, D.C.Tex.1954, 122 F.Supp. 696.

In libel in admiralty by seaman for maintenance and cure for disabilities allegedly attributable to accident which occurred proximately seven years before filing of libel, when seaman allegedly injured kidney when he fell across chain, evidence was insufficient to warrant finding that seaman's condition at time of filing the libel was solely attributable to the previous injury, or that the accident resulted in aggravation of a pre-existing condition to the extent that the subsequent illness could be attributed to the accident. *Danstrup v. The Richmond P. Hobson*, D.C.N.Y.1954, 118 F.Supp. 453.

Where seaman, according to work schedule of his vessel on Ohio River, and according to general practice and custom on the rivers within the district, worked ten days straight and was then relieved of any employment for five days, and then he would return to his work for ten consecutive days and then be off for five days, he was not entitled to recover for maintenance and cure for those five day periods when he did not work, in absence of evidence to establish any medical visitations during the five day periods or that treatments given him were a basis or an aid to cure his condition. *Haywood v. Jones & Laughlin Steel Corp.*, D.C.Pa.1952, 107 F.Supp. 108.

Evidence failed to establish that ship owner was liable to seaman, who was a diabetic, for maintenance and cure beyond May 29, 1947, arising out of deprivation of insulin from seaman while member of crew. *Tribune v. U. S.*, D.C. Pa.1950, 95 F.Supp. 197.

Evidence in fireman's libel for negligence of master of vessel in refusing fireman "hospital slip" for treatment at Marine Hospital was insufficient to support recovery for fireman's maintenance and for damages from leprosy infection. *Baccarat v. Andrew F. Mahoney Co.*, D. C.Cal.1933, 4 F.Supp. 611.

132. Award, determination of

Liability of shipowner to injured seaman for maintenance and cure should be computed at the rate stipulated for maintenance only, in absence of evidence of any expenditure for cure during the period involved and with respect to the injury on which such liability was based. *McLeod v. Union Barge Line Co.*, D.C. Pa.1952, 107 F.Supp. 371, affirmed 204 F.2d 687.

A maid who fell from stool while making up upper bunk on Ohio River boat

and who sustained injuries to left leg, hip, back, ankles, knees and to genital organs and who thereafter had a traumatic neurosis which disabled her from gainful employment to date of trial and who was in need of psychiatric treatment was entitled to maintenance and cure. *Filotei v. Carnegie-Illinois Steel Co.*, D.C. Pa.1951, 98 F.Supp. 174, affirmed 193 F.2d 1009.

Where injured seaman was gainfully employed, and it was impossible to say whether he would ever submit to operation upon his hand, court could make no present determination of the rights of the parties, as respects future maintenance. *Lewis v. American-Hawaiian S. S. Co.*, D.C.N.Y.1943, 49 F.Supp. 127.

Evidence did not require increase in award to injured seaman for cure and maintenance. *Mahnich v. Southern S. S. Co.*, D.C.Pa.1942, 45 F.Supp. 839, affirmed, 1942, 129 F.2d 857, affirmed 135 F.2d 602, reversed on other grounds 64 S.Ct. 455, 321 U.S. 96, 88 L.Ed. 561.

133. — Credits

Fact that automobile driver was primarily liable to seaman for negligence in causing him injury and shipowner only secondarily liable for maintenance and cure meant that seaman might be made to satisfy his right of recovery from automobile driver rather than from shipowner, if situation were such that he could, and that seaman would have to allow shipowner credit for whatever he had already collected from automobile driver. *Gomes v. Eastern Gas & Fuel Associates*, D.C.Mass.1954, 127 F.Supp. 435.

Shipowner was not entitled to credit in computing his liability for maintenance and cure for compensation received by seaman's settlement with automobile owner who alone caused seaman's injury. *Id.*

Where \$1 per day value of board and lodging was considered in determining, in civil action, earnings lost by seaman, his recovery for maintenance and cure in subsequent action would be reduced accordingly. *Bickart v. Union Barge Line Corp.*, D.C.Pa.1953, 110 F.Supp. 942, affirmed 209 F.2d 957.

Since obligation of employer to pay maintenance and cure is definite where a seaman sustains injuries in furtherance of his employment, it is improper to allow employer a credit for money advanced to seaman after injury, in absence of a specific agreement that payments are to be credited or set off against amount which employer is required to pay for maintenance and cure.

Haywood v. Jones & Laughlin Steel Corp., D.C.Pa.1952, 197 F.Supp. 108.

In computing the time for maintenance and cure allowed injured seaman, the period seaman was in Marine Hospital at government expense and period of a subsequent voyage were properly deducted. *Socony-Vacuum Oil Co. v. Aderhold*, 1951, 240 S.W.2d 751, 150 Tex. 292.

In cases involving maintenance and cure, jury should find time when maintenance and cure should begin, when it should terminate, per diem allowance for maintenance and expense of cure, total amount earned at time of trial by shore employment between the commencement and termination periods, and total amount of expected future earnings from shore employment from time of trial to termination period, so as to enable trial court, in entering judgment, to deduct amount earned by shore employment from total allowance for maintenance and cure. *Id.*

134. — Expenses incurred

Injured ship's laundress would not be entitled to maintenance and cure during period she was hospitalized under circumstances where she had no expense. *Neville v. American Barge Line Co.*, D.C. Pa.1952, 105 F.Supp. 408.

Injured seaman who had expended no money for medical treatment was not entitled to an award against shipowner for cure. *McCarthy v. American Eastern Corp.*, D.C.Pa.1948, 81 F.Supp. 612, affirmed 175 F.2d 727.

In suit by seaman for personal injuries, no maintenance should be allowed for period when seaman was a patient at hospital where he was received by virtue of certificate of hospitalization given him by captain of ship on which seaman was injured. *The Alpha*, D.C. Pa.1942, 44 F.Supp. 809.

Maintenance of a disabled seaman while being cured takes the place of his sustenance on the ship, which goes with his employment and is part of the cure, but both are limited to the expense of such maintenance and cure as is not at the disposal of the seaman through recourse to the marine hospital service. *Robinson v. Swayne & Hoyt*, D.C.Cal. 1940, 33 F.Supp. 93.

Maintenance and cure to a disabled seaman both arise out of the same duty which does not extend beyond the seaman's need, and that need is measured by what is actually necessary and what the seaman actually spends or for which he obligates himself. *Id.*

Note 134

Fireman whose finger was injured aboard vessel could recover amount expended by him for medicines and difference between amount he received for maintenance and amount he paid for boarding with practical nurse during early stages of convalescence, but could not recover expenses incurred for expert testimony for use in trial of case, or prospective expenses of amputating finger. *Mohamed v. United Fruit Co.*, D.C.Mass.1935, 12 F.Supp. 1000.

Injured seaman, in absence of proof that he paid out anything for maintenance and cure while disabled, was not entitled to allowance therefor. *The S. S. Magdapur*, D.C.N.Y.1933, 3 F.Supp. 971.

135. — Living costs

In libel by seaman for maintenance, old rates for maintenance are not conclusive in view of increased living costs. *Baun v. Hudson*, D.C.Alaska 1952, 108 F.Supp. 523.

136. — Nursing services

Where injured seaman was properly awarded maintenance for a year, his claim for nursing services, because his wife was required to assist him in putting on his clothes because of his paralysis not caused by the injury, is properly disallowed where real nursing services are not needed. *Tol v. U. S.*, C.C.A. Cal.1948, 166 F.2d 775.

137. — Transportation expenses

Where seaman was told by fellow crewman that nearest hospital facility, at Corpus Christi, Texas, was closed, on day when he was discharged from vessel and given marine ticket for any public health service hospital but provided with no means to get there, it might have been an error in judgment for him to travel to Staten Island, New York, for treatment, but he did not thereby forfeit his right to maintenance and cure; and he was entitled to recover costs of transportation to Staten Island. *Sawyer v. California Tanker Co.*, D.C.N.J.1957, 147 F.Supp. 324.

Where woman cook aboard respondent vessel suffered fractured toe when she stubbed it against raised hatch cover, and, though she left ship at Memphis, she was not paid transportation to her official station at Louisville, she was entitled to recover, in libel action, plane and taxi fare expended in transportation from Memphis to Louisville, and cost of orthopedic shoes prescribed by her physician as maintenance. *Haycraft v.*

The Java Sea, D.C.Ky.1956, 143 F.Supp. 303.

A seaman who was injured in the service of the vessel on which he was employed as a seaman, was entitled to recover from his employer maintenance for time he did not work during his normal work periods, and transportation expense incurred by him to receive medical and therapeutic care. *Haywood v. Jones & Laughlin Steel Corp.*, D.C.Pa.1952, 107 F.Supp. 108.

In action in admiralty by seaman for maintenance and cure, seaman was not entitled to recover expenses incurred in traveling from his home to a lake resort in order to be able to row a boat and secure exercise of injured shoulder muscles in accordance with instructions by his personal physician to take rowing exercises to prevent adhesions and stiffness of shoulder, where employer did not approve or authorize such trips, and seaman mixed pleasure with such trips as he was a devout fisherman. *Id.*

Fisherman, who broke his leg, was entitled to recover cost of transportation by taxicab to and from hospital for outpatient treatment. *Hunt v. The Trawler Brighton, Inc.*, D.C.Mass.1952, 102 F.Supp. 300.

A seaman, leaving ship before completion of voyage to return on another ship to city where voyage started for purpose of obtaining medical treatment at hospital therein, was not entitled to recover from shipowner transportation expenses incurred in traveling between such city and his home while awaiting admission to hospital. *Wahler v. Alaska S. S. Co.*, D.C.Wash.1950, 91 F.Supp. 261.

138. — Amount generally

A seaman's recovery for maintenance and cure must be measured by the reasonable cost thereof at the time of the trial, including, in the discretion of the court, such amounts as may be needful in the immediate future for maintenance and cure of a kind and for a period which can be definitely ascertained. *U. S. v. Robinson*, C.A.Ala.1948, 170 F.2d 578. See, also, *Tol v. U. S.*, C.C.A.Cal.1948, 166 F.2d 775; *Donovan v. Esso Shipping Co.*, D.C.N.J.1957, 152 F.Supp. 247; *Chesser v. General Dredging Co.*, D.C.Fla.1957, 150 F.Supp. 592; *Hiltz v. Atlantic Refining Co.*, D.C.Pa.1944, 57 F.Supp. 308.

The fact that while seaman is on fishing vessel he is required to pay for his own food, does not prevent an allowance to seaman for meals during disability from injury while on fishing voy-

age. *The City of Avalon*, C.C.A.Cal.1946, 156 F.2d 500.

Seaman, injured while in service of shipowner, can recover from shipowner the reasonable value of hospital and medical treatment furnished, at his request, on shipowner's failure to furnish such treatment, where amount thereof has not been paid to hospital by shipowner. *Methodist Episcopal Hospital v. Pacific Transport Co.*, D.C.Cal.1920, 3 F.2d 508.

Though injured seaman, who was seeking maintenance and cure, was not a member of any union, rate of maintenance as fixed in union contracts in the industry could be considered as tending to show the reasonable value of cost of maintenance and cure. *Yates v. Dann*, D.C.Del.1954, 124 F.Supp. 125, reversed on other grounds and vacated on other grounds 223 F.2d 64.

Test in determining maintenance of seaman is, in absence of contract, that which is reasonably necessary to maintain seaman. *Keefe v. American Pac. S. S. Co.*, D.C.Cal.1953, 110 F.Supp. 853.

Owner of vessel was not bound by contract between union of its injured seaman and other shipowners providing that maintenance at Port of San Pedro, California, should be \$8 a day, but fact that contract recognized that maintenance should be \$8 a day was persuasive of the reasonableness of the sum. *Id.*

In libel by seaman for maintenance, recovery was required to be measured by reasonable cost of maintenance during period of disability, and was comparable to that which seaman was entitled to. *Bann v. Hudson*, D.C.Alaska 1952, 108 F.Supp. 523.

Seaman seeking payment of maintenance following his discharge from marine hospital to an out-patient status should be allowed an award not based upon what is calculated as cost of keep on a ship, nor on a sum that would be allowed to one who would live with strangers, in view of fact that he was going to live with his parents. *Boborick v. U. S.*, D.C.Wash.1948, 76 F.Supp. 70.

139. — Adequacy of amount

\$150 allowance for maintenance and cure in respect to seaman sustaining bruise on arm was sufficient. *The Corapeake*, C.C.A.Va.1931, 46 F.2d 262, certiorari denied 52 S.Ct. 9, 284 U.S. 622, 76 L.Ed. 530.

In cook's action for maintenance and cure resulting from fracture of right femur and other injuries for which the

seaman had already received maintenance payments of \$50 per week for 30 successive weeks, commencing with discharge from hospital, evidence disclosed that payments already received were adequate. *Olsen v. The Patricia Ann*, D.C.N.Y.1957, 152 F.Supp. 315.

Two-thirds of seaman's prior weekly wages paid by insurance carrier during seven weeks' forced unemployment due to broken arm was inadequate as maintenance and cure, where seaman should have had only light work for considerable time. *Kahyis v. Arundel Corporation*, D.C.Md.1933, 3 F.Supp. 492.

140. — Excessiveness of amount

Award of \$5,000 and costs for maintenance and cure was not excessive where seaman was confined to home from July 3, 1950 until July 12, 1950 and was treated July 8, 1950 by family physician for pneumonia and where seaman was hospitalized from July 12, 1950 until October 29, 1951 and continued to get out patient treatment until February 23, 1955 when he was readmitted to hospital for resection of lung and remained there as convalescent tubercular patient until June 30, 1955. *Weiss v. Central R. Co. of N. J.*, C.A.N.Y.1956, 235 F.2d 309.

\$1,800 was not excessive award for maintenance and cure, where seaman had suffered from asthma for several years and verdict would represent only aggregate period of about two years at most. *Moyle v. National Petroleum Transport Corp.*, C.C.A.N.Y.1945, 150 F.2d 840.

Jury's verdict awarding injured seaman \$2,500 for maintenance and cure was excessive by \$1,000 as tantamount to finding that he was entitled to between two and three years' allowance, where his doctor testified that injury to plaintiff's hand was permanent and evidence showed no injury to bony structure thereof. *Sickner v. Great Lakes Transit Corporation*, D.C.N.Y. 1936, 17 F.Supp. 330.

141. — Particular amounts awarded

Evidence showed that assistant engineer injured through negligence of libelee was entitled to \$912 for loss of time and maintenance and \$288 for pain and suffering. *National Bulk Carriers v. Hall*, C.C.A.Tex.1945, 152 F.2d 658.

Evidence established that seaman who was pitched over sideways when he fell backwards descending ladder from tank on tanker to deck and who had cast on his arm from neck to finger tips and who sustained permanent partial disability of

Note 141

wrist from 25 per cent to 35 per cent was entitled to maintenance for a period of 130 days. *Campbell v. Tidewater Associated Oil Co.*, D.C.N.Y.1956, 141 F.Supp. 431.

Where seaman could be treated at Marine Hospital and was entitled to maintenance only for reasonable time and not necessarily until point of maximum cure had been reached, and court fixed reasonable time at six months, lump sum award of \$1,500 would be made. *Brahms v. Moore-McCormack Lines*, D.C.N.Y. 1955, 133 F.Supp. 383.

Seaman, who had sustained lumbosacral strain with resultant low back pain, and who was victim of wrong diagnosis by his own physician, would be awarded maintenance and care in amount of \$1,312. *Wehe v. U. S.*, D.C. Pa.1955, 130 F.Supp. 768.

Deck hand sustaining injuries on a barge was entitled to \$354 for maintenance and cure. *Early v. American Dredging Co.*, D.C.Pa.1951, 101 F.Supp. 393.

Where libelant contracted syphilis while employed as a seaman on vessel owned and operated by the United States as a proximate result of failure to furnish him with a safe place to work and negligence in allowing another employee known to be suffering from syphilis to contaminate other members of crew, libelant was entitled to recover \$1636 as maintenance and wages during period of unemployment due to syphilis. *Flynn v. U. S.*, D.C.N.Y.1951, 98 F.Supp. 991.

Purser who was struck on head and prior to accident had spinal curvature and chronic arthritic condition, and had been earning approximately \$200 monthly was entitled to \$840 for maintenance and \$1,600 for loss of wages. *Logue v. U. S.*, D.C.N.Y.1949, 85 F.Supp. 805.

Seaman's claim for maintenance and cure for injuries to little finger of left hand allegedly sustained aboard vessel was dismissed, where it appeared that the \$126 received by seaman was full amount of maintenance and cure to which he was entitled for the injury. *Gettings v. Dichmann, Wright & Pugh*, D.C.Pa.1949, 84 F.Supp. 908.

Evidence established that libelant seaman made expenditures for maintenance so as to authorize an award therefor in the sum of \$1,500 for past maintenance and \$1,250 for future maintenance. *Barnes v. American-Hawaiian S. S. Co.*, D.C.Cal.1948, 79 F.Supp. 699.

Where seaman, on December 30, left vessel in England because of illness and,

at government expense, was hospitalized and thereafter on February 25, was returned to the United States well and able to work, seaman was entitled to wages for one day in December, for all of January and for 25 days in February, and was entitled to maintenance for such period except the time spent in hospital and on board vessel returning home. *Warren v. U. S.*, D.C.Mass.1948, 75 F. Supp. 836.

Evidence entitled libelant to \$2,500 maintenance money and allowance for medical care as result of contracting tuberculosis while employed as oiler on respondent's ship but did not entitle libelant to damages from respondent on ground that his illness was caused by improper or unhealthful food or improper living or working quarters while on respondent's ship. *Cordes v. Weyerhaeuser S. S. Co.*, D.C.Cal.1946, 75 F. Supp. 537.

A merchant marine messman whose hip, side and back were injured while descending from defective bunk which United States negligently permitted to exist on its merchant vessel, and who was in hospital and in rest center for some five weeks, and who was unable to work for some five months thereafter, and who had lost \$2,000 in past earnings, but whose present and future earnings were not diminished by reason of his partial disability, was entitled to \$477 maintenance and cure. *Mitchell v. U. S.*, D.C.Pa.1946, 69 F.Supp. 79.

In libel for maintenance and cure and unpaid wages resulting from stabbing by fellow seaman, evidence showed that libelant was entitled to \$3,399 for maintenance, \$300 for expenses incurred, \$500 for further cure and \$1,178.67 for unpaid wages. *Kyriakos v. Polemis*, D.C.N.Y. 1945, 63 F.Supp. 19.

Under rule imposing duty on vessel and her owner of providing maintenance and cure for seaman injured while in service, allowance to injured seaman of maintenance at rate to be found reasonable and adequate for 77 days up to date of trial, together with 100 days further maintenance at same rate, was proper under circumstances. *Phillips v. Matson Nav. Co.*, D.C.Cal.1945, 62 F.Supp. 247.

A member of crew who as a result of being assaulted four times during voyage by another member of crew was unable to resume a gainful occupation until almost 18 months after voyage was entitled to \$2,000 indemnity and maintenance and cure in the sum of \$1,031.-

25. *Hong v. U. S.*, D.C.N.Y.1945, 59 F. Supp. 794.

One given first aid in ship's hospital after injuring his ankle while working on ship, sent to doctor's office in foreign country, returned to city where he boarded ship on another vessel after ankle was put in cast, going number of times to hospital, at which cast was removed, in such city, unable to work for four or five months, always paying for his board and lodging in his mother's home when he worked, and giving her about \$2 a day for living expenses, was entitled to award of \$100 for cure and maintenance for reasonable time, in absence of proof of any expenditure for medical service. *The Western World*, D. C.N.Y.1940, 31 F.Supp. 340.

142. — Particular amounts awarded; daily rate

Allowance to chief engineer, who had been injured in performance of duties on vessel, of maintenance at rate of \$5 a day from time ship reached port until engineer was discharged from hospital as cured, was proper. *Tarkenton v. U. S.*, C.A.Va.1948, 169 F.2d 171.

Evidence established that seaman injured in service of his ship was entitled to recover his wages at rate of \$95 per month, including his maintenance at rate of \$1.40 per day. *O'Donnell v. Great Lakes Dredge & Dock Co.*, C.C.A.III.1942, 127 F.2d 901, reversed on other grounds 63 S.Ct. 488, 318 U.S. 36, 87 L.Ed. 596.

Medical testimony was too indefinite to justify an award to seaman of cure and maintenance at \$2.50 a day for period of three years, where no physician predicted that seaman would be incapacitated for three years beyond date of trial. *Campbell v. American Foreign S. S. Corporation*, C.C.A.N.Y.1941, 116 F.2d 926, certiorari denied 61 S.Ct. 959, 313 U. S. 573, 85 L.Ed. 1530.

Where seaman was injured on April 11, 1947, was released from a United States Marine Hospital on April 28 and was discharged from United States outpatient clinic on June 23 with the recommendation of three weeks convalescence, his cure and maintenance should be estimated at \$3.15 a day with a total payment of not more than \$400. *Ruppe v. Waterman S. S. Corp.*, D.C.N.Y.1956, 142 F.Supp. 208.

In suit for maintenance and cure by seaman, seaman was entitled to \$308 for medical bills and maintenance for 55 days at agreed rate of \$6 a day, or \$330, where defendant was unable to show such payments would be a specific dupli-

cation of prior compensation received by seaman. *Stendze v. The Neptune*, D.C. Mass.1955, 135 F.Supp. 801.

Injured boatswain was awarded past maintenance at the rate of \$8.00 per day, excluding the period when he was inpatient at Marine Hospital, and was awarded one year future maintenance without prejudice to his rights to seek further maintenance as and when it became due. *Maiden v. U. S.*, D.C.Cal.1955, 133 F.Supp. 430.

Seaman who was injured when his hand came into contact with a spike protruding from head of a fish that he was handling while working aboard scalloper was entitled, in absence of any showing of negligence on boat owner's part, only to care and maintenance at rate of \$6 a day for period of 45 days. *De Gagne v. Love's Fisheries*, D.C.Mass. 1954, 125 F.Supp. 632.

In proceeding on a libel against United States for injuries sustained by chief steward when allegedly broken slats on floor of meat box of vessel caused him to fall, evidence established that chief steward was entitled to maintenance for 90 weeks at \$35 per week. *North v. U. S.*, D.C.Tex.1954, 122 F.Supp. 696.

Seaman and engine room wiper, who sustained herniated disc, who suffered pain and suffering for six months after accident, who lost about six months' time, and who would not be wholly or greatly disabled even in absence of operation, would be awarded maintenance at rate of \$6 per day for six months. *Kurtz v. U. S.*, D.C.Tex. 1953, 121 F.Supp. 856.

In action by American seaman who suffered heart attack resulting in permanent disability while in service of employer on board vessel for damages under this section and for maintenance, evidence established that seaman reached maximum recovery one year from date of heart attack and that seaman was entitled to maintenance during period from attack to date of maximum recovery at rate of \$6 per day. *Lamon v. Standard Oil Co.*, D.C.La.1954, 117 F.Supp. 831.

A seaman injured while in service of vessel was entitled to maintenance at rate of \$3.50 a day during period in which he received medical attention and until he received maximum of cure possible. *Soriano v. U. S.*, D.C.N.Y.1953, 115 F.Supp. 234.

Assistant ship's surgeon who sustained injury while in service of his ship, which injury affected surgeon's ability to use left hand and arm, was settled

Note 142

by an award from ship owner for maintenance and cure, for two and one-half years at daily rate as stipulated by the parties. *Irwin v. U. S.*, D.C.N.Y.1953, 111 F.Supp. 912.

Eight dollars a day would be deemed reasonable sum for maintenance of injured seaman at the Port of San Pedro, California. *Keefe v. American Pac. S. S. Co.*, D.C.Cal.1953, 110 F.Supp. 853.

Maintenance and cure allowance of thirty-five days at six dollars a day was ample. *Dayton v. Midland S. S. Lines*, D.C.N.Y.1953, 110 F.Supp. 418.

In libel by seaman for maintenance, claim of \$6 a day for Seattle area in 1949-50 was not unreasonable. *Baun v. Hudson*, D.C.Alaska 1952, 108 F.Supp. 523.

A fair and reasonable allowance for maintenance of injured fisherman was \$35 a week. *Hunt v. The Trawler Brighton, Inc.*, D.C.Mass.1952, 102 F.Supp. 300.

Cattleman employed on board vessel sustaining injuries while descending the side of the vessel was entitled to recover maintenance at \$6 per day or \$1,062. *Smith v. U. S.*, D.C.N.Y.1951, 98 F.Supp. 1007.

Medical testimony as to necessity for future medical treatment of seaman suffering from a diaphragmatic hernia sustained in shipboard fall established that seaman was entitled to maintenance for one year at stipulated rate of \$6 per day. *Ladjimi v. Pacific Far East Line*, D.C.Cal.1951, 97 F.Supp. 174.

Where 50 per cent of seaman's disability was chargeable to aggravation of pre-existing arthritic condition by accidental injuries sustained while in respondent's service as member of crew of vessel owned and operated by respondent, seaman was entitled to maintenance and cure for 1248 days at the rate of \$1.75 per day under stipulation that maintenance and cure should be computed at the rate of \$3.50 per day for total disability. *White v. Campbell*, D.C.Pa.1951, 96 F.Supp. 195.

Where libellant, as result of accident while in service of ship, received a serious aggravation of existing physical condition, and because of recurrent pain and disability in his back there was a considerable number of days when he could not perform his work as a head-waiter averaging \$125 a week, he would be awarded maintenance and cure in the sum of \$25 a week for days when he was unable to work, in the total sum of \$3000. *Bekin v. U. S.*, D.C.N.Y.1949, 85 F.Supp. 907.

Evidence established that seaman was entitled to maintenance and cure from November 18 through January 10, less period from December 7 through December 17, at rate of \$3.50 a day. *Sturruv v. North Atlantic & Gulf S. S. Co.*, D.C.Pa. 1949, 84 F.Supp. 524.

Ship owners were liable to seaman who lost end of right index finger, for maintenance and care at rate of \$3.50 per day for period from date of injury to date of discharge as fit for duty, excluding periods of hospitalization at no cost or expense to seaman. *Jaskolski v. Groves*, D.C.Pa.1949, 84 F.Supp. 495.

Evidence established that merchant seaman was unable to return to work for period of 56 days following termination of his employment with respondent as result of injury to his right eye sustained in service of respondent's vessel while on authorized shore leave in foreign port, so as to entitle seaman to maintenance and cure for period of 56 days at \$3.50 per day. *Grovell v. Stockard S. S. Co.*, D.C.Pa.1948, 73 F.Supp. 931, affirmed 176 F.2d 121.

Seaman disabled by injuries sustained in service of vessel was entitled to maintenance and cure from date of termination of voyage to date of trial at rate of \$3.50 per day, excluding periods of employment and hospitalization, where he was under no expense. *Burch v. Smith*, D.C.Pa.1948, 77 F.Supp. 6.

\$87.50 a month for two years from time of discharge would be awarded to seaman, who had contracted tuberculosis, for maintenance following his discharge from marine hospital to an out-patient status. *Boboricken v. U. S.*, D.C.Wash. 1948, 76 F.Supp. 70.

Owner and operator of motor vessel in navigation on Ohio River was liable to member of crew for maintenance and cure at the rate of \$3.50 per day during period of disability due to back injury sustained in fall on ice on barge towed by vessel while crew member was performing his duties as a deck-hand. *Murphy v. American Barge Line Co.*, D.C.Pa.1947, 74 F.Supp. 886, affirmed 169 F.2d 61, certiorari denied 69 S.Ct. 133, 335 U.S. 859, 93 L.Ed. 406.

Where, at time of trial, seaman still had difficulty in using his right hand which might be slightly helped by treatment, and stump of left arm gave him considerable trouble and further treatments were necessary, seaman was entitled to maintenance and cure to date of claim, for period of 736 days at \$3.50 a day. *Shields v. U. S.*, D.C.Pa.1947, 73.

F.Supp. 862, affirmed in part and reversed in part on other grounds 175 F.2d 743, certiorari denied 70 S.Ct. 249, 338 U.S. 899, 94 L.Ed. 553.

Where marine engineer had been permanently disabled by injuries sustained because of unseaworthiness of vessel, he was awarded an allowance for maintenance of \$5 a day for period from date of trial on January 6, 1944, to December 31, 1944; maintenance awarded during pendency of suit having been paid at that rate. *Stokes v. U. S.*, D.C. N.Y.1943, 55 F.Supp. 56, modified on other grounds 144 F.2d 82.

A seaman entitled to maintenance would be allowed \$2.75 per day on account of increase in living costs, though rate in district had long been \$2.50 per day. *Lewis v. American-Hawaiian S. S. Co.*, D.C.N.Y.1943, 49 F.Supp. 127.

Evidence showed that seaman falling on ship sustained fracture of right transverse process of third lumbar vertebra, entitling him to maintenance and cure for six months at rate of monthly wages which were \$72.50 per month. *Helmke v. U. S.*, D.C.La.1934, 8 F.Supp. 521.

Where injured seaman's petition claimed \$2500 for maintenance and cure his recovery therefor was limited to \$2500, notwithstanding he pleaded maintenance in amount of \$6 per day, because this was not a liquidated demand in that petition did not allege a definite number of days. *Socony-Vacuum Oil Co. v. Aderhold*, 1951, 240 S.W.2d 751, 150 Tex. 292.

143. Interest

In absence of peculiar fact situation warranting otherwise, interest upon award for maintenance and cure should have been allowed from date when maintenance and cure became due, rather than from date of filing of amended libel. *Medina v. Erickson*, C.A.Cal.1955, 226 F.2d 475, certiorari denied 76 S.Ct. 702, 351 U.S. 912, 100 L.Ed. 1446.

Failure to add interest to amount of judgment for maintenance and cure after date upon which jury found that it became apparent that plaintiff could not be benefited by further medical treatment was not abuse of discretion, in absence of provision of employment contract purporting to fix or to establish mathematical basis for calculating, either amount to be paid for maintenance and cure, or period of time during which payments for maintenance and cure should continue, if duty to make them

should ever arise. *Doucette v. Vincent*, C.A.Mass.1952, 194 F.2d 834.

Where claim of seaman's administratrix for maintenance was brought in admiralty, and there was not substantial dispute as to amount and rate of the maintenance, claim was sufficiently liquidated to bear interest from date payment was due. *Hazelton v. Luckenbach S. S. Co.*, D.C.Mass.1955, 134 F.Supp. 525.

Where it did not appear when seaman's administratrix had been appointed, award of interest on claim for maintenance would be made from date of suit. *Id.*

Where mandate of Court of Appeals remanding case to District Court for entry of decree in favor of libellant seeking wages, maintenance, and cure for injuries sustained by him on shore leave in foreign port did not require allowance of interest, and it appeared that liability of shipowner was uncertain until decision of Court of Appeals, and that amount of liability was unliquidated, District Court, in exercise of its discretion, would disallow interest to libellant. *Ellis v. American Hawaiian S. S. Co.*, D.C.Cal.1948, 77 F.Supp. 836.

Seaman who was entitled to recover maintenance and wages was entitled to six percent simple interest from end of voyage. *Warren v. U. S.*, D.C.Mass.1948, 75 F.Supp. 836.

144. Wages

One signing off vessel, on which he was employed as second mate, in California, and traveling to New York at employer's expense for hernia operations, was not entitled to wages for period after he left ship until end of her voyage in foreign country over a year later. *Macris v. Sociedad Maritima San Nicolas, S.A.*, C.A.N.Y.1957, 245 F.2d 708.

It was error to refuse to deduct, from maintenance and cure award, wages earned by seaman as dishwasher during period of his alleged incapacity. *Perez v. Suwanee S. S. Co.*, C.A.N.Y.1956, 239 F.2d 180.

To deckhand on vessel used by cannery for purpose of towing fishing boats to and from scows which receive the catches who was injured in service of ship, but who suffered from no negligence or unseaworthiness, the cannery is liable under maritime law for no more than deckhand's wages to end of fishing season and his maintenance and cure. *Alaska Indus. Bd. v. Alaska Packers Ass'n*, C.A.Alaska 1951, 186 F.2d 1015.

Wages, as distinguished from maintenance and cure, due to seaman who had fallen ill upon a ship sailing under Panamanian flag, ended when he returned to port where he had signed on, and did not continue thereafter until he recovered in view of provision of Panamanian code that any member of crew who is ill "shall have the right not only to his wages until he recovers, but also until the day in which he may be back in the port of his engagement". *Jonsson v. U. S., C.C.A.N.Y.1946, 158 F.2d 682, certiorari denied 67 S.Ct. 1201, 331 U.S. 811, 91 L. Ed. 1831.*

An award of wages after end of voyage in addition to maintenance is unauthorized. *McManus v. Marine Transport Lines, C.C.A.N.Y.1945, 149 F.2d 969, certiorari denied 66 S.Ct. 231, 326 U.S. 773, 90 L.Ed. 467.*

Where, from time of his injury to time he obtained maximum possible cure, seaman received full wages, seaman was not entitled to maintenance. *In re Edwards, D.C.La.1957, 148 F.Supp. 285.*

Ordinarily, seaman's claim for unpaid wages for balance of voyage after seaman had been put ashore for medical attention would normally follow seaman's claim for maintenance, but shipowner's obligation to pay future wages was merely matter of an executory employment contract, and shipowner had freedom of rescinding such contract for material misrepresentation made by seaman at time of entry into the contract. *Hazelton v. Luckenbach S. S. Co., D.C.Mass. 1955, 134 F.Supp. 625.*

Seaman's wages necessarily include maintenance to extent that time coincides, and if seaman lost wages for specified period only, and was entitled to maintenance for identical period, and recovered wages, obligation of daily maintenance would be satisfied. *Gomes v. Eastern Gas and Fuel Associates, D.C. Mass.1955, 132 F.Supp. 29.*

Where seaman signed written articles to serve aboard vessel in capacity of oiler at certain base wages for voyage not to exceed twelve calendar months, and he entered on duty and rendered deck service while vessel was still tied to wharf, and before it left port on contemplated voyage seaman was injured while driving away from vessel in automobile on personal mission, seaman was not entitled to overtime, which he would have earned, had he actually gone on voyage. *Keefe v. American Pac. S. S. Co., D.C. Cal.1953, 110 F.Supp. 853.*

Decree in favor of injured seaman for wages during period of his disability should be reduced by applicable withholding and Social Security Tax deductions. *Id.*

Where voyage terminated on day after seaman sustained injury, he was not entitled to be compensated for loss of wages during period of his disability, since recovery of wages is limited to voyage. *Wills v. Keystone Tankship Corp., D.C. 1952, 109 F.Supp. 650.*

Where seaman sustained injuries day before termination of voyage, so that he was unable to enter on performance of his duties for subsequent voyage, fact that he had signed anticipatory articles for subsequent voyage did not entitle him to recover wages for subsequent voyage, since anticipatory articles did not take effect. *Id.*

Contract of a fisherman is not required to fix his wages at a fixed monthly rate in order to entitle him to maintenance and cure, but may call for payment of wages in the form of a share in the proceeds of trip. *Hunt v. The Trawler Brighton, Inc., D.C.Mass.1952, 102 F.Supp. 300.*

An action for maintenance and cure includes as one of its elements a claim for wages to the end of the seaman's contract. *Sperbeck v. A. L. Burbank & Co., D.C.N.Y.1950, 88 F.Supp. 623, affirmed 190 F.2d 449.*

Seaman's claim for lost wages for injury to his little finger on left hand allegedly sustained aboard vessel was dismissed, where verdict in civil action for damages, which was combined with the admiralty action for trial purposes only, was for a sum adequate under evidence to include lost wages. *Gettings v. Dichmann, Wright & Pugh, Inc., D.C.Pa.1949, 84 F.Supp. 908.*

Where passing of a physical examination was a condition precedent to acceptance of chief mate on government-owned merchant vessel, and X-rays taken before, but developed after mate had signed articles for voyage disclosed a tubercular condition which mate had developed on previous voyage, mate was not entitled to wages that he would have received for ensuing voyage. *Smith v. U. S., D.C.Md.1946, 66 F.Supp. 933, affirmed 159 F.2d 247, certiorari denied 67 S.Ct. 1735, 331 U.S. 849, 91 L.Ed. 1858.*

Generally, wages are not a part of "maintenance and cure" recoverable by seamen. *Berglann v. The Winona, D.C. Or.1942, 46 F.Supp. 483.*

Wages earned by injured seaman in shore employment should be treated as evidence negating disability, thereby putting in issue duty to pay maintenance in whole or in part. *Socony-Vacuum Oil Co. v. Aderhold*, 1951, 240 S.W.2d 751, 150 Tex. 292.

145. Mitigation of damages

A seaman injured in the service of his vessel is required to mitigate his damages by availing himself of all existing facilities for his rehabilitation. *Donovan v. Esso Shipping Co.*, D.C.N.J.1957, 152 F.Supp. 347.

146. Apportionment

Maintenance and cure due boatswain for injuries sustained while serving aboard vessel were not subject to apportionment, though due to concurrent and mutual fault of boatswain and ship's officer. *Lewis v. U. S. Nav. Co.*, D.C.N.Y. 1944, 57 F.Supp. 652.

147. New trial

The denial of a motion for new trial on ground that damages of \$630 for maintenance and cure awarded to injured fisherman were excessive as a matter of law was discretionary with the trial judge. *Nolan v. General Seafoods Corporation*, C.C.A.Mass.1940, 112 F.2d 515.

Where seaman recovered verdict for maintenance and cure under instructions which erroneously stated the law, and also recovered damages on permissible theory of negligence, court would not permit either verdict to stand, and would order a new trial. *Sims v. Sprague S. S. Co.*, D.C.Pa.1949, 85 F.Supp. 563.

In action by seaman for maintenance and cure, verdict for employer was against weight of evidence and new trial would be granted. *Spellman v. American Barge Line Co.*, D.C.Pa.1943, 76 F.Supp. 1, reversed on other grounds 176 F.2d 716.

Where master of vessel testified that he understood his duties, in reference to a crew member who became ill or injured on vessel, to consist merely of giving such crew member a hospital ticket and putting him or her ashore, directing verdict for employer on cause of action based on unseaworthy vessel was error and new trial would be granted. *Id.*

148. Res judicata

Where a judgment was entered in a seaman's favor for maintenance and cure up to a certain date; but although sea-

man objected to court's refusal to modify the judgment to make such award without prejudice to a right to claim maintenance beyond such date if facts would then show seaman entitled to further maintenance under the law, he nevertheless accepted full fruits of such judgment, by such acceptance, he was precluded from attacking the judgment on appeal and was bound thereby. *Cox v. Esso Shipping Co.*, C.A.Tex.1957, 247 F.2d 629.

Where opinion of court of appeals, in affirming judgment of district court, stated that trial court was correct in awarding seaman maintenance and cure "until the date of the trial in the court below" the judgment affirmed was not res judicata in favor of seaman seeking to recover maintenance and cure for a subsequent period, after the trial and after his condition had allegedly become incurable. *Robinson v. U. S.*, C.A.Ala. 1949, 177 F.2d 582, certiorari denied 70 S.Ct. 611, 339 U.S. 923, 94 L.Ed. 1346.

Where claim for maintenance and cure was dismissed for want of prosecution pursuant to Admiralty Rule 38, 28 U.S.C.A., and Maritime Cases authorizing dismissal of admiralty suit on application of respondent if libellant does not appear and prosecute suit and comply with court orders, such dismissal was not an adjudication on merits and did not bar subsequent action on same claim for maintenance and cure. *Miller v. Standard Oil Co.*, D.C.Ill.1952, 104 F.Supp. 946, affirmed 199 F.2d 457, certiorari denied 73 S.Ct. 836, 345 U.S. 945, 97 L.Ed. 1370, rehearing denied 73 S.Ct. 1113, 345 U.S. 971, 97 L.Ed. 1388.

Settlement of civil action under this section for injuries sustained by seaman employed on vessel owned and operated by respondent and settlement of claim for maintenance and cure to date of such settlement did not bar subsequent action for maintenance and cure on account of disability due to same injury. *White v. Campbell*, D.C.Pa.1951, 96 F.Supp. 195.

Seaman's action under the Jones Act, section 688 of this title against employer to recover for injuries sustained during course of employment, pending in Pennsylvania Court of Common Pleas, and at present on appeal in the Pennsylvania Supreme Court, was not res judicata as to seaman's right to maintenance under General Admiralty and Maritime Laws, even if a final judgment had been entered in action pending in state court. *Rankin v. Iron City Sand & Gravel Corp.*, D.C.Pa.1947, 71 F.Supp. 26.

An unappealed from judgment of dismissal in civil action holding that seaman could not recover for maintenance and cure because he was not injured in service of the ship was res judicata in subsequent libel under Suits in Admiralty Act of 1920, section 741 et seq. of this title, to recover for such maintenance and cure, requiring dismissal of libel for absence of triable issue of fact or law. *Wahlgren v. Standard Oil Co. of N. J.*, D.C.N.Y.1944, 58 F.Supp. 783, affirmed 152 F.2d 106.

149. Lien

Seaman's right to maintenance and cure becomes a lien on the vessel in his favor. *The Montezuma*, C.C.A.N.Y.1927, 19 F.2d 355.

150. Review

In seaman's action for maintenance and cure and for wages to end of period of his employment, decision of district court allowing maintenance for a period ending October 15, 1954, which was date upon which physician reasonably and in good faith determined for first time that seaman had reached maximum possible recovery in August, 1954, was affirmed. *Joncich v. Vitco*, C.A.Cal.1953, 234 F.2d 161.

In seaman's action for maintenance and cure, and wages to end of period of his employment, notwithstanding provision of collective bargaining agreement purporting to limit earnings to date and hour seaman left vessel because of illness, decision of district court allowing recovery for full period of employment, on ground that relevant provision of agreement was contrary to public policy, was affirmed. *Id.*

In seaman's action for maintenance and cure for personal injuries resulting from accident aboard tug, court's finding that seaman was still in need of medical care and attention at time of trial was not clearly erroneous. *Yates v. Dann*, C.A.Del.1955, 223 F.2d 64.

Where evidence of cost of doctor calls for injured seaman was lacking in definite proof and the amount involved was trifling, a reversal of judgment denying recovery therefor was not justified. *Bailey v. City of New York*, C.C.A.N.Y. 1946, 153 F.2d 427.

In suit by an injured seaman-fisherman, his motion in court of appeals for an order to take additional proof would be denied in so far as it related to evidence seeking to extend time for which maintenance and cure was awarded, where there was no indication that full

recovery resulted nor that such recovery resulted from continued and necessary medical treatment. *Luksich v. Misetich*, C.C.A.Cal.1944, 140 F.2d 812, certiorari denied 64 S.Ct. 1280, 322 U.S. 761, 88 L. Ed. 1280.

In a suit for wages, etc., by an injured seaman-fisherman, his motion in court of appeals for an order to take additional proof, not supported by a showing of good cause, would be denied in so far as it related to evidence as to duration of the employment, on which both parties testified before the district court. *Id.*

In action against vessel owner by seaman who contracted skin disease, permitting seaman to state that reasonable allowance for subsistence would be about \$3.50 per day was not reversible error, where seaman's counsel explained that reasonable allowance was "what might be the reasonable charge for medical service" and counsel for owner said that word "subsistence" meant that seaman was entitled to reasonable amount for board and keep when disabled from work. *Compton v. Hammond Lumber Co.*, 1936, 55 P.2d 21, 153 Or. 546, reversed on other grounds and rehearing denied 58 P.2d 235, 153 Or. 546, certiorari denied 57 S.Ct. 42, 299 U.S. 578, 81 L.Ed. 426, modified on other grounds 61 P.2d 1257, 154 Or. 650.

Supreme court on appeal was limited to specific points of error and trial objections made to trial court's charge to jury as supported by the evidence, in injured seaman's action for maintenance and cure. *Socony-Vacuum Oil Co. v. Aderhold*, 1951, 240 S.W.2d 751, 150 Tex. 292.

151. Remand

Where seaman, who brought action for maintenance and cure, did not indicate why he worked but 70 days during period for which maintenance and cure was requested, and seaman also failed to show that he was unable to secure part-time employment for entire period of convalescence, case was remanded for specific finding as to date when no further improvement of seaman was possible, and finding as to whether seaman used reasonable effort to secure part-time employment. *Wilson v. U. S.*, C.A. N.Y.1953, 229 F.2d 277.

In libel for maintenance and cure and wages by chief officer as result of assault by chief engineer, where proof showed first an assault by libelant and later an assault by chief engineer and court of appeals could not determine whether relief was denied because libel-

ant initially started the fight or because of the threatening language used just before the final assault and separate findings were needed for an intelligent review of the court's action in dismiss-

ing such claims, cause would be remanded for findings on such issues. *Kable v. U. S.*, C.C.A.N.Y.1948, 169 F.2d 90.

§ 667. Penalty for failure to keep medicines

If, on any such vessel, such medicines, medical stores, lime or lemon juice, or other articles, sugar, and vinegar, as are required by section 666 of this title, are not provided and kept on board, as required, the master or owner shall be liable to a penalty of not more than \$500; and if the master of any such vessel neglects to serve out the lime or lemon juice, and sugar and vinegar in the case and manner directed, he shall for each such offense be liable to a penalty of not more than \$100; and if any master is convicted in either of the offenses mentioned in this section, and it appears that the offense is owing to the act or default of the owner, such master may recover the amount of such penalty, and the costs incurred by him, from the owner. R.S. § 4570.

Historical Note

Derivation. Act June 7, 1872, c. 322, § 41, 17 Stat. 270.

Cross References

Application of section to sail or steam vessels engaged in coastwise trade, see section 544 of this title.

Notes of Decisions

Actions 2

Crew as receiving benefit 1

1. Crew as receiving benefit

The penalty does not inure to the benefit of the crew. *Petersen v. J. Cunningham Co.*, D.C.Cal.1896, 77 F. 211.

2. Actions

The penalty imposed for a failure to provide medical stores, etc., could be recovered by the United States by a civil action, when brought in former circuit, now district, court for the district of Massachusetts. *U. S. v. Elliot*, C.C.Mass. 1879, Fed.Cas.No.15,043.

§ 668. Weights and measures

Every master shall keep on board proper weights and measures for the purpose of determining the quantities of the several provisions and articles served out, and shall allow the same to be used at the time of serving out such provisions and articles, in the presence of a witness, whenever any dispute arises about such quantities, and in default shall, for every offense, be liable to a penalty of not more than \$50. R.S. § 4571.

Historical Note

Derivation. Act June 7, 1872, c. 322, § 42, 17 Stat. 270.

Cross References

Application of section to sail or steam vessels engaged in coastwise trade, *see* section 544 of this title.

§ 669. Clothing and heat

Every vessel bound on any foreign voyage exceeding in length fourteen days shall also be provided with at least one suit of woollen clothing for each seaman, and every vessel in the foreign or domestic trade shall provide a safe and warm room for the use of seamen in cold weather. Failure to make such provisions shall subject the owner or master to a penalty of not less than \$100. This section shall not apply to fishing or whaling vessels or yachts. R.S. § 4572; Dec. 21, 1898, c. 28, §§ 15, 26, 30 Stat. 759, 764.

Historical Note

Derivation. Act June 7, 1872, c. 42, § 42, 17 Stat. 270.

Codification. As enacted originally, R. S. § 4572 read: "Every vessel bound on any foreign voyage shall also be provided with at least one suit of woollen clothing for each seaman, for use during the winter months; and every such

vessel shall be provided with fuel and a safe and suitable room in which a fire can be kept for the use of seamen."

Act Dec. 21, 1898 amended R.S. § 4572 to read as above set forth.

Exception. Application of and exceptions to Act Dec. 21, 1898, *see* note under section 569 of this title.

Notes of Decisions

Admissibility of evidence

Construction 1

Evidence

Admissibility 4

Sufficiency 5

Instructions 7, 8

Refusal 8

Lien 9

Pleading 3

Questions for jury 6

Refusal, instructions 8

Room 2

Sufficiency of evidence 5

by this section, after complaint made to him, is a breach of the shipping articles which justifies the men in leaving the vessel before the expiration of their term of service, and entitles them to recover wages for the time served. *The Ida McKay*, D.C.Wash.1900, 99 F. 1002.

Seamen are not justified in leaving a vessel because the forecabin where they slept was not heated and made comfortable as required by existing laws, where no complaint or request respecting that matter was made to the captain. *The C. F. Sargent*, D.C.Wash.1899, 95 F. 179.

Room provided as sleeping quarters was "room for use of seamen" within this section. *Rooker v. Alaska S. S. Co.*, 1936, 53 P.2d 295, 185 Wash. 71, certiorari denied 57 S.Ct. 14, 299 U.S. 552, 81 L.Ed. 406.

1. Construction

This section requiring shipowner to provide safe and warm room for use of seamen is safety statute, violation of which constituted negligence as matter of law. *Rooker v. Alaska S. S. Co.*, 1936, 53 P.2d 295, 185 Wash. 71, certiorari denied 57 S.Ct. 14, 299 U.S. 552, 81 L.Ed. 406.

2. Room

The refusal by the captain of a vessel to furnish a warm room for the use of the seamen in cold weather, as required

3. Pleading

Trial court's consideration of this section in instructing jury in seaman's personal injury action was proper if section was applicable under facts, notwithstanding that section was not referred to in complaint. *Rooker v. Alaska S. S. Co.*, 1936, 53 P.2d 295, 185 Wash. 71, cer-

tiorari denied 57 S.Ct. 14, 299 U.S. 552, 81 L.Ed. 406.

4. Evidence—Admissibility

In seaman's action for damages for cold contracted aboard vessel which developed into tuberculosis, admission of testimony of fellow seaman as to whether messboy coughed was not prejudicial error. *Rooker v. Alaska S. S. Co.*, 1936, 53 P.2d 295, 185 Wash. 71, certiorari denied 57 S.Ct. 14, 299 U.S. 552, 81 L.Ed. 406.

In seaman's action for damages for cold contracted aboard vessel which developed into tuberculosis, admission of seaman's testimony that messboy had cold when he left vessel after seaman testified he did not know whether messboy had cold when he went aboard, was not reversible error. *Id.*

In seaman's action for injuries alleged to have resulted from sleeping in damp bedding in forecabin, refusal to permit fellow seaman to testify whether the other seamen in forecabin had complained about wet bedding or radiator leaking was not error. *Id.*

5. — Sufficiency

Evidence that seaman was furnished with sleeping quarters in which air was so moist, because of escaping steam, that bunks became damp showed violation of this section requiring shipowner to supply seamen with warm and safe room. *Rooker v. Alaska S. S. Co.*, 1936, 53 P.2d 295, 185 Wash. 71, certiorari denied 57 S.Ct. 14, 299 U.S. 552, 81 L.Ed. 406.

6. Questions for jury

Whether tuberculosis contracted by seaman was proximate result of sleeping in forecabin in which air was so moist, because of escaping steam, that bunks became damp was for jury. *Rooker v. Alaska S. S. Co.*, 1936, 53 P.2d 295, 185 Wash. 71, certiorari denied 57 S.Ct. 14, 299 U.S. 552, 81 L.Ed. 406.

7. Instructions

Instruction that shipowner's failure to provide seaman with warm room, as re-

quired by this section, rendered owner liable for injuries to seaman's health which were natural and proximate result of such failure was proper where this section was applicable. *Rooker v. Alaska S. S. Co.*, 1936, 53 P.2d 295, 185 Wash. 71, certiorari denied 57 S.Ct. 14, 299 U.S. 552, 81 L.Ed. 406.

Instruction that shipowner was liable to seaman for injuries resulting from violation of its duty to abstain from negligently injuring sick man even though injury might not have resulted but for pre-existing infirmities, was not reversible error. *Id.*

8. — Refusal

In seaman's action for injuries based on violation of this section, refusal to give instructions on maritime or common-law duty to furnish seamen with safe quarters was proper. *Rooker v. Alaska S. S. Co.*, 1936, 53 P.2d 295, 185 Wash. 71, certiorari denied 57 S.Ct. 14, 299 U.S. 552, 81 L.Ed. 406.

Refusal to instruct that shipowner sued for injuries sustained as result of violation of this section was not required to do more than furnish living quarters suitable for seamen in good health was proper. *Id.*

Refusal to instruct that seaman could not recover from shipowner for injuries caused by ordinary incidents of seaman's occupation was not error in absence of evidence that seaman's work during voyage caused him to become sick, or that he was injured by varying weather conditions. *Id.*

Refusal to instruct that seaman who contracted cold aboard vessel which developed into tuberculosis could not recover from shipowner if seaman had contracted tuberculosis prior to his employment on vessel was proper. *Id.*

9. Lien

Clothing furnished seamen does not become a lien upon the vessel, unless needed by the seamen, and essential to the prosecution of the voyage. *Rosenthal v. The Die Gartenlaube*, D.C.N.Y. 1880, 5 F. 327.

§ 670. Slop chests

Every vessel mentioned in section 666 of this title shall also be provided with a slop chest, which shall contain a complement of clothing for the intended voyage for each seaman employed, including boots or shoes, hats or caps, underclothing and outer clothing, oiled clothing, and everything necessary for the wear of a seaman;

also a full supply of tobacco and blankets. Any of the contents of the slop chest shall be sold, from time to time, to any or every seaman applying therefor, for his own use, at a profit not exceeding 10 per centum of the reasonable wholesale value of the same at the port at which the voyage commenced. And if any such vessel is not provided before sailing, as herein required, the owner shall be liable to a penalty of not more than \$500. The provisions of this section shall not apply to vessels plying between the United States and the Dominion of Canada, Newfoundland, the Bermuda Islands, the Bahama Islands, the West Indies, Mexico and Central America. June 26, 1884, c. 121, § 11, 23 Stat. 56.

Cross References

Whaling and fishing
671 of this title.

not subject to provisions of this section, see section

Notes of Decisions

Alaskan voyages 3
Construction 1
Contributory negligence 4
Evidence 8
Pay deductions for shortages 6
Proximate cause 5
Purpose 2
Set-offs 7

(which mentions vessels bound on a voyage across the Pacific), will be applied, by analogy, to a sailing vessel on a voyage from our Pacific coast to Alaska, even though this be not considered a voyage across the Pacific. *Hogan v. The J. D. Peters*, D.C.Cal.1896, 78 F. 368.

4. Contributory negligence

Chief mate on government-owned merchant vessel, who allegedly contracted tuberculosis as the result of his inability to procure from vessel's slop chest rubber boots which would fit him, was guilty of contributory negligence precluding or, in any event, reducing recovery in failing to procure his own boots before joining the vessel, in failing to include in requisition for slop chest supplies, which he prepared, an order for boots to fit his own feet, in failing to wear rubber coverall supplied by master, and in failing to report his need to master and demand assistance. *Smith v. U. S.*, D.C.Md.1946, 66 F.Supp. 933, affirmed 159 F.2d 247, certiorari denied 67 S.Ct. 1735, 331 U.S. 849, 91 L.Ed. 1858.

5. Proximate cause

Chief mate, to maintain libel for damages for tuberculosis allegedly contracted because of respondent's alleged failure to provide a proper "slop chest" on vessel, in consequence of which mate was unable to procure therefrom a pair of rubber boots, was obliged to show by a preponderance of evidence that respondent failed to comply with this section and that such failure was the proximate cause of mate's illness. *Smith v. U. S.*, D.C.Md.1946, 66 F.Supp. 933, affirmed 159 F.2d 247, certiorari denied 67 S.Ct. 1735, 331 U.S. 849, 91 L.Ed. 1858.

1. Construction

This section, although intended primarily for convenience of seamen and for replacement in emergency situations of articles of clothing, is to be reasonably applied, and Congress did not intend by this section that a merchant ship should be required to carry a large assortment of articles of clothing sufficient at all times to supply every seaman with all articles of clothing which he might desire to purchase in every size suitable for every member of crew. *Smith v. U. S.*, D.C.Md.1946, 66 F.Supp. 933, affirmed 159 F.2d 247, certiorari denied 67 S.Ct. 1735, 331 U.S. 849, 91 L.Ed. 1858.

2. Purpose

A vessel's "slop chest" is intended to include miscellaneous articles for the convenience of seamen or as a surplus store for only emergency use. *Smith v. U. S.*, D.C.Md.1946, 66 F.Supp. 933, affirmed 159 F.2d 247, certiorari denied 67 S.Ct. 1735, 331 U.S. 849, 91 L.Ed. 1858.

3. Alaskan voyages

The provision in this section allowing but 10 per cent. profit on articles sold to seamen from the slop chest, on vessels mentioned in section 666 of this title

6. Pay deductions for shortages

A chief steward was entitled to recover from owners of vessel the amount withheld from his pay for alleged shortage in slop chest account which was responsibility of captain, where steward did not consent to the withholding and had no agreement with owners regarding possible shortages, and shortage revealed by comparing inventory at commencement of voyage with inventory at end of voyage was not shown to have been steward's shortage in view of fact that during such period prior to steward's joining the voyage another person had acted as chief steward. *Butler v. U. S. War Shipping Administration*, D.C. Pa.1946, 68 F.Supp. 441.

7. Set-offs

Where a settlement was made with one of the crew, and excessive charges were made for whisky and tobacco furnished at the bar of the boat, a court of admiralty would not sanction the settlement or the charges, but would re-

duce the set-off to a reasonable allowance for these articles. *The Rob Roy*, D.C.Tenn.1887, 30 F. 696.

Articles sold to seamen by the master during the voyage are allowed as an off-set to wages, at a rate not above 10 per cent. over the cost to the master, and a charge in excess of that is unreasonable and oppressive, under this section. *The Edwin*, D.C.N.Y.1885, 23 F. 255.

8. Evidence

In libel by chief mate of government-owned merchant vessel against the government for damages for tuberculosis allegedly contracted as the result of inability to procure rubber boots from vessel's slop chest and necessity of standing watch in wet and stormy weather, evidence was insufficient to establish that libellant's failure to have and wear rubber boots was a proximate cause of the tuberculosis. *Smith v. U. S.*, D.C.Md.1946, 66 F.Supp. 933, affirmed 159 F.2d 247, certiorari denied 67 S.Ct. 1735, 331 U.S. 849, 91 L.Ed. 1858.

§ 671. Same; vessels engaged in whaling or fishing business

Section 670 of this title shall not be construed to apply to vessels engaged in the whaling or fishing business. June 19, 1886, c. 421, § 13, 24 Stat. 82.

§ 672. Requirements, qualifications, and regulations as to crews—Qualifications

(a) No vessel of one hundred tons gross and upward, except those navigating rivers exclusively and the smaller inland lakes and except as provided in section 569 of this title, shall be permitted to depart from any port of the United States unless she has on board a crew not less than 75 per centum of which, in each department thereof, are able to understand any order given by the officers of such vessel, nor unless 65 per centum of her deck crew, exclusive of licensed officers and apprentices, are of a rating not less than able seamen. Every person shall be rated an able seaman, and qualified for service as such on the seas, who is nineteen years of age or upward, and has had at least three years' service on deck at sea or on the Great Lakes, on a vessel or vessels to which this section applies, including decked fishing vessels, and vessels in United States Government service; and every person shall be rated an able seaman, and qualified to serve as such on the Great Lakes and on the smaller lakes, bays, or sounds who is nineteen years of age or upward and has had at least eighteen months' service on deck at sea or on the Great Lakes or on the smaller lakes, bays, or sounds, on a vessel or vessels to which this section applies, including decked fishing vessels and vessels in

the United States Government service; and graduates of school ships approved by and conducted under rules prescribed by the Commandant of the Coast Guard may be rated able seamen upon graduation in good standing from said school ships: *Provided*, That no boy shall be shipped on any vessel to which this section applies unless he meets the physical qualifications contained in regulations to be prescribed by the Commandant of the Coast Guard and that no boy shall be placed on the lookout or at the wheel except for the purpose of learning, and that in narrow and crowded waters or in low visibility none below the rating of able seaman shall be permitted at the wheel: *Provided further*, That no deck boy shall be held qualified to fill the place of ordinary seaman until he has had at least six months' service as deck boy: *Provided further*, That upon examination, under rules prescribed by the Coast Guard as to eyesight, hearing, and physical condition, such persons or graduates are found to be competent: *Provided further*, That upon examination, under rules prescribed by the Coast Guard as to eyesight, hearing, physical condition, and knowledge of the duties of seamanship, a person found competent may be rated as able seaman after having served on deck twelve months at sea or on the Great Lakes, but seamen examined and rated able seamen under this proviso shall not in any case compose more than one-fourth of the number of able seamen required by this section to be shipped or employed upon any vessel.

Certificate of service as able seaman

(b) Application may be made to the Coast Guard for a certificate of service as able seaman, and upon proof being made to the Coast Guard by affidavit and examination, under rules approved by the Commandant of the Coast Guard, showing the nationality and age of the applicant, the vessel or vessels on which he has had service, that he is skilled in the work usually performed by able seamen, and that he is entitled to such certificate under the provisions of this section, the Coast Guard shall issue to said applicant a certificate of service as able seaman, which shall be retained by him and be accepted as prima-facie evidence of his rating as an able seaman.

Record of certificates of service

(c) Each Coast Guard official shall keep a complete record of all certificates of service issued by him and to whom issued and shall keep on file the affidavits and records of examinations upon which said certificates are issued.

Muster of the crew on motion or information; rules and regulations; examination of applicant for certificate of service as able seaman; surrender of certificates; new certificates

(d) The collector of customs may, upon his own motion, and shall, upon the sworn information of any reputable citizen of the United States setting forth that this section is not being complied with, cause a muster of the crew of any vessel to be made to determine the fact, at which muster said reputable citizen must be pres-

ent; and no clearance shall be given to any vessel failing to comply with the provisions of this section: *Provided*, That the collector of customs shall not be required to cause such muster of the crew to be made unless said sworn information has been filed with him for at least six hours before the vessel departs, or is scheduled to depart: *Provided further*, That any person that shall knowingly make a false affidavit for such purpose shall be deemed guilty of perjury and upon conviction thereof shall be punished by a fine not exceeding \$500 or by imprisonment not exceeding one year, or by both such fine and imprisonment, within the discretion of the court. Any violation of any provision of this section by the owner, master, or officer in charge of the vessel shall subject the owner of such vessel to a penalty of not less than \$100 and not more than \$500: *Provided further*, That the Commandant of the Coast Guard shall make such rules and regulations as may be necessary to carry out the provisions of this section, and nothing herein shall be held or construed to prevent the Commandant of the Coast Guard from making rules and regulations authorized by law as to vessels excluded from the operation of this section: *And provided further*, That no certificate of service as able seaman shall be issued by the Coast Guard until after examination of the applicant therefor, under rules and regulations prescribed by the Commandant of the Coast Guard, as to his efficiency, and upon proof, as a result of such examination, that he has been trained in and is acquainted with the duties entitling him to such rating. No seaman shall be considered an "able seaman" within the meaning of the laws of the United States relating to the manning of vessels unless he is in possession of such certificate issued by the board of local inspectors of the Coast Guard. All certificates as "able seaman" and "lifeboatman" issued by the several boards of local inspectors or other Federal officers prior to June 25, 1936, shall, within six months thereafter, be surrendered to such boards of local inspectors for cancelation, and there shall be issued in lieu thereof to all able seamen and lifeboatmen found qualified by such examination new certificates as required by law: *Provided*, That if due to inability on the part of the Department of Commerce to carry out the provisions of this subsection with regard to all seamen, the Secretary of Commerce may, in his discretion, extend the time for a period not to exceed three months. Such new certificates shall be stamped with the seal of the board of local inspectors or the Coast Guard, placed partially over the signature of the applicant for such certificate; and there shall be attached thereto a photograph of the applicant. Any other safeguards which, in the judgment of the Commandant of the Coast Guard, may be necessary and advisable to establish the authenticity of the certificate, are authorized.

Members of engine department

(e) No vessel to which this section applies may be navigated unless all of the complement in her engine department above the rating of coal passer or wiper and below the rating of licensed officer shall

be holders of a certificate of service as a qualified member of the engine department. The Coast Guard shall, upon application and examination as to competence and physical condition, as prescribed by the Commandant of the Coast Guard, issue such a certificate of service. An applicant for such rating shall produce to the Coast Guard definite proof of at least six months' service at sea in a rating at least equal to that of coal passer or wiper in the engine department of vessels required by this section to have such certificated men or proof that he is a graduate of a school ship approved by and conducted under rules prescribed by the Commandant of the Coast Guard.

Rules as to certificates of service or efficiency

(f) As to the certificates of service or efficiency, the Commandant of the Coast Guard shall promulgate rules covering the form, contents, and manner of issuance, which shall include a provision that copies of these and all documents pertaining thereto be filed in the local offices and in the central office in Washington.

Certificates of service for other ratings

(g) The Coast Guard shall, without examination (except food handlers who must be free from communicable disease), issue to all members of the crews of merchant vessels of the United States (except licensed officers), certificates of service for ratings other than as able seaman or a qualified member of the engine department, which certificates shall authorize them to serve in the capacities specified in such certificates: *Provided*, That such certificates shall not issue before oath has been taken before a Coast Guard official that the applicant therefor will faithfully and honestly perform all the duties required of him by law, and carry out the lawful orders of his superior officers on shipboard and, in the case of a radio operator, shall produce to the Coast Guard his unexpired license issued by the Federal Communications Commission to act in that capacity: *And provided further*, That when a certificate has been revoked or suspended under the provisions of subsection (h) of this section, a new certificate shall not be issued until the Coast Guard shall determine that the issue of such new certificate is compatible with the requirements of good discipline and safety at sea.

Suspension or revocation of certificates of service or efficiency

(h) All certificates of service or efficiency issued by the Bureau of Marine Inspection and Navigation or the Coast Guard shall be subject to suspension or revocation on the same grounds and in the same manner and with like procedure as is provided in the case of suspension or revocation of licenses of officers under the provisions of section 239 of this title.

Penalty for serving without certificate of service

(i) It shall be unlawful to employ any person, or for any person to serve aboard any merchant vessel of the United States, below the rating of licensed officer, who has not a certificate of service issued

by a board of local inspectors or the Coast Guard, and anyone violating this section shall be liable to a penalty of \$100 for each offense.

Effect of section on other laws

(j) This section is not to amend or repeal any of the provisions of chapter 3 of Title 47.

Freedom of seamen unimpaired

(k) Nothing in this section shall be construed to impose, sanction, or permit any condition of involuntary servitude nor to prevent any seaman from leaving the service of any vessel when in a safe harbor to the same extent and with like effect as under the provisions of existing law.

Effective date of section

(l) This section shall take effect six months after June 25, 1936: *Provided*, That if it is found impracticable on the part of the Department of Commerce to furnish the certificates herein provided, the Secretary of Commerce may, in his discretion, extend the effective date for a period not exceeding three months. Mar. 4, 1915, c. 153, § 13, 38 Stat. 1169; June 25, 1936, c. 816, § 1, 49 Stat. 1930; May 22, 1937, c. 237, §§ 1, 2, 50 Stat. 199; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

References in Text. Chapter 3 of Title 47, referred to in subsec. (j), was repealed by Act Feb. 23, 1927, c. 169, § 39, 44 Stat. 1174.

1937 Amendment. Subsec. (a) amended by Act May 22, 1937, § 1, by substituting "upon graduation in good standing from said school ships" for "after twelve months' service at sea after graduation".

Subsec. (e) amended by Act May 22, 1937, § 2, by inserting the clause "or proof that he is a graduate of a school ship approved by and conducted under rules prescribed by the Secretary of Commerce".

1936 Amendment. Act June 25, 1936 amended section by designating existing provisions as subsec. (a)-(d) and adding subsecs. (e)-(l).

Subsec. (a) amended to omit as executed requirement pertaining to percentage of deck crew that shall have a rating not less than able seaman (forty, forty-five, fifty and fifty-five per cent, the first, second, third and fourth year after Mar. 14, 1915); to substitute "and vessels in United States Government service" and "and vessels in the United States Government service" for "naval vessels or coast guard vessels" and "naval vessels, or coast guard vessels"; to

insert the words "after graduation" after "twelve months' service at sea"; and to add the provisos relating to boys and deck boys.

Subsec. (b) amended to substitute "Application may be made" for "Any person may make application" and to require proof that applicant is skilled in the work usually performed by able seamen.

Subsec. (c) amended to insert the words "and records of examinations" following "affidavit".

Subsec. (d) amended to insert the phrase "at which muster said reputable citizen must be present" and to add provisos pertaining to examination of applicant for certificate of service as able seaman, surrender of certificates and new certificates.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in

note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

Following changes were made on the authority of 1946 Reorg. Plan No. 3, set out in note under section 1 of this title:

Subsec. (a). "Commandant of the Coast Guard" was substituted for "Secretary of Commerce" and "Coast Guard" for "Department of Commerce."

Subsec. (b). "Commandant of the Coast Guard" was substituted for "Secretary of Commerce" and references to board of local inspectors were changed to the Coast Guard.

Subsec. (c). "Coast Guard official" was substituted for "board of local inspectors" and "them" changed to "him."

Subsec. (d). "Commandant of the Coast Guard" was substituted for "Secretary of Commerce" and for "Board of

Supervising Inspectors, with the approval of the Secretary of Commerce," "the Coast Guard" was substituted for "any board of local inspectors" in fourth proviso, and "or the Coast Guard" was inserted after "board of local inspectors" in third and fifth sentences.

Subsec. (e). "Coast Guard" was substituted for "local inspectors of the Bureau of Marine Inspection and Navigation", "Commandant of the Coast Guard" for "Secretary of Commerce", and "the Coast Guard" for "such inspectors".

Subsec. (f). "Commandant of the Coast Guard" was substituted for "Secretary."

Subsec. (g). References to boards of local inspectors of the Bureau of Marine Inspection and Navigation were changed to Coast Guard and Coast Guard officials.

Subsec. (h) and (i). Phrase "or the Coast Guard" was inserted.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Cross References

Denial or revocation of seaman's document, narcotics violations, see sections 239a and 239b of this title.

Enforcement, application, separability and appropriation to carry out this section, see sections 689-692 of this title.

Exceptions as to tugs, towboats, and unrigged vessels, see section 672b of this title.

Offenses classified, see section 1 of Title 18, Crimes and Criminal Procedure.

Officers of United States vessels to be American citizens, see section 221 of this title.

Perjury and subornation of perjury, penalties, see sections 1621 and 1622 of Title 18, Crimes and Criminal Procedure.

Notes of Decisions

Crew, loss of 1

Fines, cancellation of 2

Foreign vessels 3

Negligence 4

1. Crew, loss of

By this section it is provided that clearance shall not be given to any vessel unless 65 per cent. of her deck crew shall be of a rating not less than able seamen, but under section 569 of this title, if part of the deck crew has been lost by desertion or casualty and no men equal in rank to those lost are obtainable, the obligations of this section do

not apply and the vessel, notwithstanding a shortage in her percentage of able seamen, may depart from port. 1922, 33 Op.Atty.Gen. 367.

2. Fines, cancellation of

Broker does not have lien for services in causing cancellation of fines for violation of this section, although advancing credit for use, if necessary. *La Merced*, D.C.Wash.1926, 11 F.2d 672.

3. Foreign vessels

This section does not apply to foreign vessels. *Petition of Canadian Pac. R. Co.*, D.C.Wash.1921, 278 F. 180.

4. Negligence

In libel involving collision between motor vessel and fishing vessel anchored in open sea on a fishing bank, even if the fishing vessel was inadequately manned, the lack of such personnel did not contribute to the collision or result-

ant damage and loss of life and therefore did not constitute a fault. *The Sakito Maru*, D.C.Cal.1941, 41 F.Supp. 769, affirmed in part and reversed in part on other grounds 137 F.2d 983, certiorari denied 64 S.Ct. 520, 321 U.S. 764, 88 L.Ed. 1060.

§ 672—1. Exception to section 672; certain sail vessels

The provisions of section 672 of this title, relating to the manning of certain vessels, shall not apply to any sail vessel of less than five hundred tons registered tonnage, while not carrying passengers for hire, and while not operating outside the line dividing inland waters from the high seas, as defined in section 151 of Title 33. July 8, 1941, c. 280, 55 Stat. 579.

§ 672—2. Same; certain persons as able seamen

Notwithstanding any provision of section 672 of this title, every person may be rated as an able seaman for the purpose of serving on vessels of not more than five hundred gross tons, on bays and sounds, when such vessels are not carrying passengers, who is nineteen years of age and upward and who has had at least twelve months of service on deck at sea or on the Great Lakes or on the bays and sounds connected directly with the seas. July 8, 1941, c. 279, 55 Stat. 579.

§ 672a. Nationality of crews—Officers and pilots

(a) From and after June 25, 1936, all licensed officers and pilots of vessels of the United States shall be citizens of the United States, native-born, or completely naturalized.

Seamen

(b) From and after six months after June 25, 1936, upon each departure of any such vessel from a port of the United States, 75 per centum of the crew, excluding licensed officers, shall be citizens of the United States, native-born, or completely naturalized, unless the Commandant of the Coast Guard shall, upon investigation, ascertain that qualified citizen seamen are not available, when, under such conditions, he may reduce the above percentages.

Vacancies on foreign voyage

(c) If any vessel while on a foreign voyage is for any reason deprived of the services of any member of the crew, such position or vacancy caused by the promotion of another to such position may be supplied by a person other than defined in subsection (a) and (b) of this section until the first call of such vessel at a port in the United States where such replacements can be obtained.

Penalty for violating section

(d) The owner, agent, or officer of any such vessel, who shall employ any person in violation of the provisions of this section, shall be subject to a penalty of \$500 for each offense. June 25, 1936, c. 816, § 5, 49 Stat. 1935; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department,

but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

"Commandant of the Coast Guard" was substituted for "Secretary of Commerce" on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Cross References

Citizenship of officers and crew on vessels documented under laws of the United States, see sections 221 and 1132 of this title.

Enforcement, application, separability and appropriation to carry out section, see sections 689-692 of this title.

§ 672b. Exceptions to section 672; unrigged vessels, tugs, and towboats

The provisions of section 672 of this title, requiring the manning of certain merchant vessels by persons holding certificates of service or efficiency issued by the Bureau of Marine Inspection and Navigation or the Coast Guard shall not apply as to unrigged vessels, except seagoing barges, and, insofar as said provisions apply to tugs and towboats, the said provisions are modified as follows:

Able seamen; rating

(a) Able seamen shall not be required in the deck crew of tugs and towboats on the bays and sounds connected directly with the seas, and every person may be rated an able seaman for the purpose of serving on tugs and towboats on the seas who is nineteen years of age and upwards and who has had at least eighteen months of service on deck at sea or on the Great Lakes or on the bays and sounds connected directly with the seas; and

Service and rating equal to coal passer or wiper

(b) Service and rating at least equal to that of coal passer or wiper in the engine department of tugs and towboats operating on

the seas or Great Lakes or on the bays and sounds connected directly with the seas shall be considered as meeting the requirement of subsection (e) of section 672 of this title which requires that an applicant for rating under that subsection shall produce to the Coast Guard definite proof of at least six months' service at sea in a rating at least equal to that of coal passer or wiper in the engine department of vessels required by said section to have such certificated men.

Nothing in this section shall restrict or modify any of the other provisions of section 672 of this title which must be complied with before the certificates therein authorized can be granted. June 16, 1938, c. 467, § 1, 52 Stat. 753; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 28, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1230, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the

transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

Phrase "or the Coast Guard" was inserted in opening paragraph and "Coast Guard" was substituted for "inspector of the Bureau of Marine Inspection and Navigation" in subsec. (b) on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

§ 672b—1. Exception to section 672; seagoing barges

Notwithstanding any provision of section 672 of this title, every person may be rated as an able seaman for the purpose of serving on seagoing barges who is nineteen years of age and upward, and who has had at least twelve months of service on deck at sea or on the Great Lakes or on the bays and sounds connected directly with the seas. Sept. 25, 1941, c. 422, 55 Stat. 732.

§ 672c. Definitions

When used in sections 643a, 660b, and 672b of this title—

(1) The term "unrigged vessel" means any vessel that is not self-propelled;

(2) The term "seagoing barge" means any barge which from its design and construction may be reasonably expected to encounter and ride out the ordinary perils of the seas and which in fact in the usual course of its operations passes outside the line dividing inland waters from the high seas, as defined in section 151 of Title 33. June 16, 1938, c. 467, § 4, 52 Stat. 754.

§ 673. Requirements as to watches; duties of seamen; hours of work; penalty; right of seamen to discharge; effective date

In all merchant vessels of the United States of more than one hundred tons gross, excepting those navigating rivers, harbors, lakes (other than Great Lakes), bays, sounds, bayous, and canals, exclusively, the licensed officers and sailors, coal passers, firemen, oilers, and water tenders shall, while at sea, be divided into at least three watches, which shall be kept on duty successively for the performance of ordinary work incident to the sailing and management of the vessel: *Provided*, That in the case of radio-telegraph operators this requirement shall be applicable only when three or more radio officers are employed. No licensed officer or seaman in the deck or engine department of any tug documented under the laws of the United States (except boats or vessels used exclusively for fishing purposes) navigating the Great Lakes, harbors of the Great Lakes, and connecting and tributary waters between Gary, Indiana; Duluth, Minnesota; Niagara Falls, New York; and Ogdensburg, New York, shall be required or permitted to work more than eight hours in one day except in case of extraordinary emergency affecting the safety of the vessel and/or life or property. The seamen shall not be shipped to work alternately in the fireroom and on deck, nor shall those shipped for deck duty be required to work in the fireroom, or vice versa; nor shall any licensed officer or seaman in the deck or engine department be required to work more than eight hours in one day; but these provisions shall not limit either the authority of the master or other officer or the obedience of the seamen when in the judgment of the master or other officer the whole or any part of the crew are needed for maneuvering, shifting berth, mooring, or unmooring, the vessel or the performance of work necessary for the safety of the vessel, her passengers, crew, and cargo, or for the saving of life aboard other vessels in jeopardy, or when in port or at sea, from requiring the whole or any part of the crew to participate in the performance of fire, lifeboat, or other drills. While such vessel is in a safe harbor no seaman shall be required to do any unnecessary work on Sundays or the following-named days: New Year's Day, the Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day, but this shall not prevent the dispatch of a vessel on regular schedule or when ready to proceed on her voyage. And at all times while such vessel is in a safe harbor, eight hours, inclusive of the anchor watch, shall constitute a day's work. Whenever the master of any vessel shall fail to comply with this section and the regulation issued thereunder, the owner shall be liable to a penalty not to exceed \$500, and the seamen shall be entitled to discharge from such vessel and to receive the wages earned. But this section shall not apply to vessels engaged in salvage operations: *Provided*, That in all tugs and barges subject to this section when engaged on a voyage of less than six

hundred miles, the licensed officers and members of crews other than coal passers, firemen, oilers, and water tenders may, while at sea, be divided into not less than two watches, but nothing in this proviso shall be construed as repealing any part of section 222 of this title. This section shall take effect six months after June 25, 1936. Mar. 4, 1915, c. 153, § 2, 38 Stat. 1164; June 25, 1936, c. 816, § 2, 49 Stat. 1933; June 23, 1938, c. 597, 52 Stat. 944; May 12, 1948, c. 286, § 4(a), 62 Stat. 233.

Historical Note

1948 Amendment. Act May 12, 1948 amended section by striking out period after "management" in the first sentence and adding the proviso limiting the effect of the section on radio-telegraph operators.

1938 Amendment. Act June 23, 1938 inserted the second sentence limiting the hours of labor of certain officers and seamen on certain vessels navigating the Great Lakes and adjacent waters.

1936 Amendment. Act June 25, 1936 amended section generally, and among other changes, inserted references to "lakes (other than Great Lakes)", bayous, canals; shifting berth, mooring or unmooring the vessel; inserted the clause "nor shall any licensed officer or seaman in the deck or engine department be required to work more than eight hours in one day;" substituted the words "the licensed officers and sailors, coal passers, firemen, oilers, and water tenders shall, while at sea, be di-

vided into at least three watches" for "the sailors shall, while at sea, be divided into at least two, and the firemen, oilers, and water tenders into at least three watches"; decreased from nine to eight hours the day's work when vessel is in safe harbor; prescribed penalty for failure to comply with this section and regulations thereunder; permitted minimum of two watches for licensed officers and members of crews other than coal passers, firemen, oilers and water tenders of tugs and barges on voyages of less than 600 miles; and provided for effective date of section.

Effective Date of 1948 Amendment. The amendment of this section by Act May 12, 1948, became effective Apr. 1, 1949, by the provisions of section 9 of said Act May 12, 1948.

Legislative History: For legislative history and purpose of Act May 12, 1948, see 1948 U.S. Code Cong. Service, p. 1532.

Cross References

Enforcement, application, separability and appropriation to carry out section, see sections 689-692 of this title.

Watch duty of deck officers, see section 235 of this title.

Notes of Decisions

Day 3
Limitation of liability, violation 16
Miles 4
Overtime 5-7
 Custom 6
 Limitations 7
Precautions rule 19
Purpose 1
Retroactive effect 2
Sunday work 8
Violation 14-18
 Effect 15
 Limitation of liability 18
 Necessity 17
 Negligence 18
Voyage 9, 10
 Regulations 10

Watches 11-13
 Collision 13
 Crew, division and exclusion 12
 Equality 11

1. Purpose

The primary purpose of this section was to probate safety at sea, and its effect as a regulator of working conditions was of subordinate interest. *Buttimer v. Detroit Sulphite Transp. Co.*, D.C. Mich. 1941, 39 F. Supp. 222. See, also, *O'Hara v. Luckenbach S. S. Co.*, Cal. 1928, 46 S. Ct. 157, 269 U.S. 364, 70 L. Ed. 313.

Note 1

In enacting proviso permitting division of officers and certain members of crews of tugs and barges into two watches when engaged on a voyage of less than 600 miles, Congress had in mind not the regulating of working conditions, but factor of safety at sea and that on voyages of less than 600 miles made by tugs and barges division of officers and members of crew into two instead of three watches would not militate against safety factor. *Buttimer v. Detroit Sulphite Transp. Co.*, D.C.Mich.1941, 39 F. Supp. 222.

2. Retroactive effect

Amendments to this section were inapplicable to determination of seamen's right to leave ship because of alleged violation of such section occurring before effective date of such amendments. *The Youngstown*, C.C.A.La.1940, 110 F. 2d 968, certiorari denied 61 S.Ct. 68, 311 U.S. 690, 85 L.Ed. 446.

This section passed after stranding of vessel did not apply in subsequent proceeding for exemption from liability. *The Denali*, D.C.Wash.1938, 23 F.Supp. 145, reversed on other grounds 105 F.2d 413, adhered to on rehearing 112 F.2d 952, certiorari denied 61 S.Ct. 65, 311 U.S. 687, 85 L.Ed. 444.

3. Day

The word "day" in this section, as amended, must be given its common and legal signification, that is, a calendar day of 24 hours commencing at midnight, 1937, 39 Op.Atty.Gen. 112.

4. Miles

Under this section permitting division of officers and certain members of crews of tugs and barges into two watches when engaged on a voyage of less than 600 "miles" the distance on a voyage on the Great Lakes is to be measured in nautical miles rather than in land or statute miles, notwithstanding that on charts of the Great Lakes the distances are given in statute or land miles. *Buttimer v. Detroit Sulphite Transp. Co.*, D.C.Mich.1941, 39 F.Supp. 222.

On issue whether this section permitting division of officers and certain members of crews of tugs and barges into two watches when engaged on a voyage of less than 600 miles referred to nautical or to land or statute miles, it is presumed unless otherwise specified that distances on water refer to nautical rather than land miles. *Id.*

5. Overtime

While this section provides that seamen employed on tugs must not be per-

mitted to work more than eight hours in one day, it merely protects other seamen from being required to work overtime, and permitting seaman employed as fireman and water tender aboard a vessel other than a tug to labor more than eight hours per day without requiring him to do so did not violate this section. *Kane v. American Tankers Corp. of Del.*, C.A.N.Y.1955, 219 F.2d 637.

There is no federal statutory requirement for the payment of wages for overtime service of seamen. *Sorensen v. City of New York*, C.A.N.Y.1953, 202 F.2d 857, certiorari denied 74 S.Ct. 674, 347 U.S. 951, 98 L.Ed. 1097.

Overtime work which was done and paid for in accordance with voluntary agreement acquiesced in by shipowner crew, and union did not violate this section. *The Youngstown*, C.C.A.La.1940, 110 F.2d 968, certiorari denied 61 S.Ct. 69, 311 U.S. 690, 85 L.Ed. 446.

It is no answer to claim of unseaworthiness of vessel, through deficiency in crew, thus placing burden upon one man, that he did not seek overtime for every unrecorded screw turned or bolt tightened after hours, for duty of shipowners to seamen, who are wards of admiralty, is not so lightly discarded by either failure to record each period of overtime or a willingness to continue with his task. *Bradt v. U. S.*, D.C.N.Y. 1954, 122 F.Supp. 190, affirmed in part and reversed in part on other grounds 221 F.2d 325.

6. — Custom

Seamen cannot collect wages for overtime under a custom, alleged to be an implied condition of their contract, that they should work only between certain hours each day, and not at all on Sundays and holidays, unless absolutely necessary for the safety of the ship; such custom being in violation of this section. *Ramsauer v. U. S.*, C.C.A.Wash.1927, 21 F.2d 907.

7. — Limitations

An action against owner of steamship to recover penalties for permitting licensed officers to work more than eight hours per day in violation of this section was governed by five year limitation period provided by section 2462 of Title 28. *U. S. v. Argonaut Line*, D.C.N.Y.1940, 33 F.Supp. 833.

8. Sunday work

Where a ship had proceeded up a river above charted waters and soundings of which the captain had information, and was in a country where sudden blows

might be expected, without protection from wind, a seaman's refusal to assist with the cargo on Sunday, by showing coolies how to load and unload slings necessary to prevent breakage, when ordered to do so by the captain, was wrongful; the ship not being in a "safe harbor," within the meaning of this section providing that seamen shall not be required to do unnecessary work on Sundays in safe harbors, the work being necessary, and the order of the master not being an abuse of discretion; but seamen's refusal to assist with cargo on Sunday when the vessel was not in a safe harbor and the work was necessary, but where peril was not great nor danger imminent, did not warrant their discharge in the absence of a showing of incompetency or continued wilful disobedience or neglect of duty. *The Donna Lane*, D.C.Wash.1924, 299 F. 977.

A seaman on a schooner in harbor, where she was towed to receive a cargo of lumber, could not refuse to work on Sunday, in loading the schooner, where the towing vessel was not able to enter the harbor by reason of an insufficiency of water, and was lying outside in the lake, awaiting the schooner, and was in a place of danger. *Smith v. The J. C. King*, D.C.Pa.1880, 3 F. 302.

Seamen on a vessel lying at anchor off shore, in a place of danger, in case of a change of weather, may be required to help unload on Sunday. *The Richard Matt*, D.C.Ill.1864, Fed.Cas.No.11,766.

A seaman is not relieved from working on Sunday by any general law. *Uary v. The Washington*, D.C.Pa.1838, Fed.Cas. No.14,323.

9. Voyage

Under this section permitting division of officers and certain members of crews of tugs and barges into two watches when engaged on a voyage of less than 600 miles, the meaning of term "voyage" is to be ascertained not from procedure followed by barge owners in paying crews, but by considering context in which term is used in this section and purpose which Congress sought to accomplish in enacting it. *Buttimer v. Detroit Sulphite Transp. Co.*, D.C.Mich.1941, 39 F.Supp. 222.

Where before departing from Detroit, barge cleared for Canadian port and on arrival at port of loading, entry was made and barge remained in port of loading taking on cargo for more than a week before clearing on voyage to Detroit, and on arrival there entry was made at United States Customs and

barge remained in Detroit for more than a week before clearing for a lake port to again load cargo, the trip from Detroit to Canadian port of loading constituted a "voyage" and the trip from Canadian port to Detroit also constituted a "voyage" within this section permitting division of officers and certain members of crews of tugs and barges into two watches when engaged on a voyage of less than 600 miles, as against contention that the round trip constituted the "voyage." *Id.*

10. — Regulations

Under this section permitting division of officers and certain members of crews of tugs and barges into two watches when engaged on a voyage of less than 600 miles, the definition of such a "voyage" by Secretary of Commerce who issued regulations although not controlling was persuasive. *Buttimer v. Detroit Sulphite Transp. Co.*, D.C.Mich.1941, 39 F.Supp. 222.

11. Watches—Equality

Under this section, sailors must be divided into watches of equal or approximately equal numbers, notwithstanding there may be insufficient work to keep night watch busy; and, where watches are not so constituted, a seaman is entitled to discharge and pay earned, in view of the long-established meaning of the term "watch," and the distinction between "sea watch" and "anchor watch." *O'Hara v. Luckenbach S. S. Co.*, Cal. 1926, 46 S.Ct. 157, 269 U.S. 364, 70 L.Ed. 313.

Under this section requiring division of sailors at sea into equal watches, "equal watches" means successive and continuous watches to be constituted in numbers as nearly equal as the sum of the whole number will permit. *New York & Cuba Mail S. S. Co. v. Continental Ins. Co. of City of New York*, C. C.A.N.Y.1941, 117 F.2d 404, certiorari denied 61 S.Ct. 1103, 313 U.S. 580, 85 L.Ed. 1537.

That United States merchant vessel carried more seamen than were required by its certificate of inspection did not relieve it from division of sailors into equal watches as required by this section. *The American Shipper*, D.C.N.Y. 1932, 3 F.Supp. 184, affirmed 70 F.2d 632, affirmed 55 S.Ct. 291, 294 U.S. 23, 79 L.Ed. 735, reargument denied 55 S.Ct. 443, 294 U.S. 382, 79 L.Ed. 933.

12. — Crew, division and exclusion

This section did not require any watches for boatswain and wiper. *The Youngs-*

Note 12

town, C.C.A.La.1940, 110 F.2d 968, certiorari denied 61 S.Ct. 69, 311 U.S. 690, 85 L.Ed. 446.

An oiler's performance of regular and customary duties of deck engineer, on vessel which did not carry a regular deck engineer, did not violate this section, even though performance of such duties required the breaking of a watch, where other oilers maintained their regular watches. *Id.*

A vessel cannot avoid compliance with this section, by obtaining a certificate from local inspectors stating that she required only a certain number of seamen for her navigation, and assigning all above that number to day work only, and not including them in the watches. *El Estero*, D.C.Tex.1926, 14 F.2d 349.

Persons on barges who looked after a donkey boiler which furnished steam for running a generator, the steering engine, heating and any other auxiliary purposes, and who were not required to have certificates as firemen issued by Bureau of Marine Inspection and Navigation were not "firemen" within exception to two-watch system on tugs and barges when engaged on a voyage of less than 600 miles, and hence such persons were not required to be divided into three watches. *Buttimer v. Detroit Sulphite Transp. Co.*, D.C.Mich.1941, 39 F. Supp. 222.

As respects whether shipowner and its managing officers were guilty of neglect in failing to maintain watches as required by this section so as to preclude recovery on indemnity marine policy for loss by fire, section applied not only to sailors who were carried pursuant to requirements of inspection certificate, but also to those carried in excess of requirements of certificate. *New York & Cuba Mail S. S. Co. v. Continental Ins. Co. of City of New York*, D.C.N.Y.1940, 32 F.Supp. 251, reversed on other grounds 117 F.2d 404, certiorari denied 61 S.Ct. 1103, 313 U.S. 580, 85 L.Ed. 1537.

Men hired as part of ship's crew under special agreement to serve in separate department known as maintenance and repair department as mechanics or laborers to repair and maintain physical condition of ship were not entitled to be divided into watches under this section, and hence were not entitled to wages where they had refused to work when master had refused to assign them to a watch. *The Chilbar*, D.C.Pa.1935, 10 F. Supp. 926.

13. — Collision

Navigation of tug at sea at night while blacked out in wartime by watch officer

and helmsman required to stand excessive watches as result of undermanning constituted fault contributing to collision. *Moran Towing & Transp. Co. v. U. S.*, D.C.N.Y.1948, 80 F.Supp. 623.

14. Violation

Seamen who were requested to work more than eight hours a day on steamship, but who refused request and worked only eight hours a day, were not "required" to work more than eight hours a day within provision of this section that seamen shall not be required to work more than eight hours a day. *Bobie v. Lykes Bros. S. S. Co.*, D.C.Tex. 1953, 110 F.Supp. 242.

15. — Effect

Where watches were broken during voyage and seamen were required to work overtime, seamen were entitled to their discharge and to payment of wages earned upon demand. *Weisthoff v. American-Hawaiian S. S. Co.*, C.C.A.N.Y.1935, 79 F.2d 124, certiorari denied 58 S.Ct. 140, 296 U.S. 619, 80 L.Ed. 439.

Seamen were entitled to discharge and wages for violation of this section. *Southern Pac. Co. v. Hair*, C.C.A.Tex. 1923, 24 F.2d 94.

Seamen quitting vessel because of violation of this section were entitled under section 596 of this title to double pay on refusal of demand for earned wages. *Id.*

It is immaterial that a seaman, entitled to discharge, wages, and penalty for violation of this section by the vessel, did not assign such violation as his reason for leaving the ship. *El Estero*, D.C.Tex.1926, 14 F.2d 349.

Fact that seamen on steamship were required to work more than eight hours a day in violation of provision of this section that seamen shall not be required to work more than eight hours a day would not require owners and operators of steamship to employ such seamen on a second voyage, and would not entitle seamen to recover wages up until time they were able to obtain other employment after completion of voyage for which they were employed. *Bobie v. Lykes Bros. S. S. Co.*, D.C.Tex.1953, 110 F.Supp. 242.

If master fails to comply with this section requiring division of sailors into watches, seamen are entitled to discharge with full wages and need not, when leaving vessel, give notice that they are leaving because of noncompliance with it. *The Narbo*, D.C.S.C.1937, 17 F.Supp. 991.

Where sailors of United States merchant vessel were not divided into equal

watches as provided by this section, though firemen were, fireman was entitled to discharge and wages earned. *The American Shipper*, D.C.N.Y.1932, 3 F. Supp. 184, affirmed 70 F.2d 632, affirmed 55 S.Ct. 291, 294 U.S. 23, 79 L.Ed. 735, reargument denied 55 S.Ct. 443, 294 U.S. 332, 79 L.Ed. 933.

The provisions of section 685 of this title, relating to the payment of an extra month's wages to seamen discharged in a foreign country because "the voyage is continued contrary to agreement," are not to be applied by consuls in cases of complaint by seamen for violation of this section. 1927, 35 Op.Atty.Gen. 292.

16. — Limitation of liability

Right of owner to limit liability for collision where owner fails to comply with this section, see Notes of Decisions under section 183 of this title.

17. — Necessity

Failure to assign boatswain to one of watches did not jeopardize welfare of seamen as workmen nor safety of vessel, and his assignment to customary duties of boatswain did not interfere with purpose of this section requiring division of sailors into watches, and hence seamen leaving vessel were not entitled to recover balance of wages on ground of non-compliance therewith. *The Narbo*, D.C. S.C.1937, 17 F.Supp. 891.

That boatswain was rated as able-bodied seaman did not bring him within

mandatory requirements of this section contemplating division of "sailors" into watches, precluding seamen who left vessel from recovering balance of wages on ground of failure to assign boatswain to one of watches. *Id.*

18. — Negligence

In libel on indemnity marine policy, evidence established actual fault or privity of corporate shipowner, comprising failure to provide proper watch, hold fire and boat drills, or prepare men and equipment for emergency of fire and abandonment of vessel, precluding recovery with respect to shipowner's liability for damages resulting from fire at sea. *New York & Cuba Mail S. S. Co. v. Continental Ins. Co. of City of New York*, C.C.A.N.Y.1941, 117 F.2d 404, certiorari denied 61 S.Ct. 1103, 313 U.S. 580, 85 L.Ed. 1537.

Failure of marine superintendent employed by corporate shipowner to become aware of long-continued violation of this section requiring division of sailors into equal watches was itself gross "neglect" of his duties, as affecting coverage by indemnity marine policy covering damage sustained without actual fault, privity, act or "neglect" of insured or its managing officers. *Id.*

19. Precautions rule

Failure to observe this section as affecting liability for collision see Notes of Decisions under section 221 of Title 33, Navigation and Navigable Waters.

§ 674. List of crew to be delivered to collector

Before a clearance is granted to any vessel bound on a foreign voyage or engaged in the whale fishery, the master thereof shall deliver to the collector of the customs a list containing the names, places of birth and residence, and description of the persons who compose his ship's company; to which list the oath of the captain shall be annexed, that the list contains the names of his crew, together with the places of their birth and residence, as far as he can ascertain them; and the collector shall deliver him a certified copy thereof. R.S. § 4573.

Historical Note

Derivation. Acts Feb. 28, 1803, c. 9, § 1, 2 Stat. 203; Apr. 4, 1840, c. 6, § 2, 5 Stat. 370.

Codification. The words "for which the collector shall be entitled to receive the sum of twenty-five cents" in text as

enacted originally were omitted as superseded by section 331 of this title, and the reorganization of the customs service authorized by Act Aug. 24, 1912, c. 355, § 1, 37 Stat. 434.

Notes of Decisions

Crew

List, presumption as to furnishing 2

Nationality designation 1

Foreign voyage 3

1. Crew—Nationality designation

Where the certified list of a crew does not designate the nationality of the crew, it is to be taken, as against the owners, that the crew are American citizens, even though it appears that some are of foreign nativity; for the omission was the fault of the master, and he was the agent of the owners, and his official defaults were theirs. *Pray v. U. S.*, 1874, 10 Ct. Cl. 453.

2. — List, presumption as to furnishing

Where, in a proceeding by seamen against a vessel for wages, the men claimed their wages from a date prior to the sailing date, on the ground that they were told to be on board by such date, while on behalf of the vessel it was testi-

fied they were told to be in readiness to go on board when notified, and their wages would begin on the day of sailing, and it was conceded that the vessel cleared at the custom house, but failed to sail for some time, owing to ice in port, it would be assumed that the master furnished the collector of customs with a list of the crew before his vessel cleared, as required by this section; and, as the vessel could not clear unless a crew had been secured, this fact corroborated the seamen that they were due to go on board about the date of clearance, and it would not be presumed that they were thereafter to be kept waiting indefinitely to suit the convenience of the master. *The Shetland v. Johnson*, 1903, 21 App.D.C. 416.

3. Foreign voyage

The terminus of a voyage determines its character; if it be within the limits of foreign jurisdiction, it is a foreign voyage and not otherwise. *Taber v. U. S.*, C.C.Mass.1839, 1 Story 1, Fed.Cas.No. 13,722.

§ 675. Certificate to list of crew; record

In all cases of private vessels of the United States sailing from a port in the United States to a foreign port, the list of the crew shall be examined by the collector for the district from which the vessel shall clear, and, if approved of by him, shall be certified accordingly. No person shall be admitted or employed on board of any such vessel unless his name shall have been entered in the list of the crew, approved and certified by the collector for the district from which the vessel shall clear. The collector, before he delivers the list of the crew, approved and certified, to the master or proper officer of the vessel to which the same belongs, shall cause the same to be recorded in a book by him for that purpose to be provided, and the record shall be open for the inspection of all persons, and a certified copy thereof shall be admitted in evidence in any court in which any question may arise under any of the provisions of title 53 of the Revised Statutes. R.S. § 4574.

Historical Note

Derivation. Act Mar. 3, 1813, c. 42, § 3, 2 Stat. 809.

References in Text. For distribution of title 53, sections 4501-4612, of the

Revised Statutes, referred to in the text, of which this section is a part, see note under section 543 of this title.

Notes of Decisions

1. Irregularity of shipment

No indictment lies against a master of a ship for discharging irregularly, in a foreign port, a seaman shipped irregu-

larly, in the United States, but a qui tam suit lies for the irregular shipment, under this section. 1856, 7 Op. Atty. Gen. 730.

§ 676. Rules as to list of crew

The following rules shall be observed with reference to vessels bound on any foreign voyage:

First. The duplicate list of the ship's company required to be made out by the master and delivered to the collector of the customs, under section 674 of this title, shall be a fair copy in one uniform handwriting without erasure or interlineation.

Second. It shall be the duty of the owners of every such vessel to obtain from the collector of the customs of the district from which the clearance is made, a true and certified copy of the shipping articles containing the names of the crew, which shall be written in a uniform hand, without erasures or interlineations.

Third. These documents, which shall be deemed to contain all the conditions of contract with the crew as to their service, pay, voyage, and all other things, shall be produced by the master, and laid before any consul of the United States, whenever he may deem their contents necessary to enable him to discharge the duties imposed upon him by law toward any mariner applying to him for his aid or assistance.

Fourth. All interlineations, erasures, or writing in a hand different from that in which such duplicates were originally made, shall be deemed fraudulent alterations, working no change in such papers, unless satisfactorily explained in a manner consistent with innocent purposes and the provisions of law which guard the rights of mariners.

Fifth. If any master of a vessel shall proceed on a foreign voyage without the documents required, or refuse to produce them when required, or to perform the duties imposed by this section, or shall violate the provisions thereof, he shall be liable to each and every individual injured thereby in damages, to be recovered in any court of the United States in the district where such delinquent may reside or be found, and in addition thereto be punishable by a fine of \$100 for each offense.

Sixth. It shall be the duty of the boarding officer to report all violations of this section to the collector of the port where any vessel may arrive, and the collector shall report the same to the Commandant of the Coast Guard and to the United States attorney in his district. R.S. § 4575; Feb. 27, 1877, c. 69, § 1, 19 Stat. 252; Feb.

14, 1903, c. 552, § 10, 32 Stat. 829; Apr. 5, 1906, c. 1366, § 3, 34 Stat. 100; Mar. 4, 1913, c. 141, § 1, 37 Stat. 736; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Historical Note

Derivation. Act July 20, 1840, c. 48, 5 Stat. 394, 395, 397.

Codification. Act Feb. 27, 1877 substituted "collector of customs of" for "shipping commissioner or officer acting as such in" in the Second Rule.

The words "or other commercial agent" following "consul" in the Third Rule were omitted from the Code upon the abolition of the grade of commercial agent by Act Apr. 5, 1906.

Upon incorporation into the Code, the words "Secretary of Commerce" were substituted for "Secretary of the Treasury" to conform to Acts Feb. 14, 1903 and Mar. 4, 1913. See note under section 564 of this title.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their

performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

"Commandant of the Coast Guard" was substituted for "Secretary of Commerce" on authority of 1946 Reorg. Plan No. 3. See note under section 1 of this title.

Administrative Delegation of Functions by Secretary of the Treasury. Administrative delegation of functions by Secretary of the Treasury, see note under section 1 of this title.

Notes of Decisions

Association and union agreements 7

Riders to articles 4-6

Union agreements, construction with 5

War bonus 6

Shipping articles 1-3

Alterations 1

Erasures 2

Parol evidence 3

1. Shipping articles—Alterations

Upon a dispute concerning the rate of a seaman's wages, where the shipping articles show alterations, a lesser rate being written over a larger, and the seaman testifies to the larger sum as the rate agreed on, and the evidence being evenly balanced, and the alteration not otherwise satisfactorily explained, the amount as first written should be allowed, in accordance with Fourth Rule as a salutary rule of practice, though this section is no longer in force as an express statute applicable to vessels engaged in the coasting trade. *The Richard Vaux*, D.C.N.Y.1884, 20 F. 654.

2. — Erasures

Immaterial erasures in shipping articles will be disregarded. *The Eagle*, D.C.N.Y.1846, Fed.Cas.No.4,233.

3. — Parol evidence

The third rule of this section providing that shipping articles shall be deemed to contain all the conditions of contract with the crew as to their service pay voyage, etc., merely reaffirms the parol evidence rule and does not vary the fundamental principle that ambiguity in language may be clarified by a resort to extrinsic evidence. *Agnew v. American President Lines*, D.C.Cal.1947, 73 F.Supp. 944, affirmed in part and reversed in part on other grounds 177 F.2d 107, certiorari denied 70 S.Ct. 838, 3 mems., 339 U.S. 951, 94 L.Ed. 1364.

4. Riders to articles

A rider to shipping articles prepared by shipowner and signed by master and engineer officers and deck officers must be construed against shipowner if there is more than one rational construction of rider. *Griñan v. American President*

Lines, C.A.Cal.1949, 177 F.2d 111, certiorari denied 70 S.Ct. 838, 339 U.S. 951, 94 L.Ed. 1364.

Riders to shipping articles agreement must be construed most strongly against shipowner preparing riders and most liberally in favor of seamen. *Agnew v. American President Lines, C.A.N.Y.1949, 177 F.2d 107.*

5. — Union agreements, construction with

Provisions relating to amount of war bonus in rider to shipping articles prepared by shipowner and signed by master and engineer officers and deck officers will control over provisions of agreements between shipowners' association and maritime unions of which officers are members. *Griffin v. American President Lines, C.A.Cal.1949, 177 F.2d 111, certiorari denied 70 S.Ct. 838, 339 U.S. 951, 94 L.Ed. 1364.*

An agreement between shipowners' association and maritime unions of which engineer officers and deck officers are members, entered into after internment of officers, does not control over war risk bonus provisions of agreements entered into prior to internment. *Id.*

Under shipping articles, unlicensed sailors captured by Japanese on voyage from Manila to China coast west of 180th Meridian and thereafter interned on land are in "war zone" and are entitled to war bonus while interned and while being repatriated to United States, computed at rate specified in articles while sailors are west of 180th Meridian and computed at rate specified in collective bargaining agreement during period of repatriation east of 180th Meridian, but are not entitled to maintenance after internment. *Id.*

An agreement between defendant shipowner and unions to which sailors belong, entered into after capture of sailors, does not retroactively wipe out provisions in rider to shipping articles giving sailors right to war bonus during captivity. *Agnew v. American President Lines, C.A.Cal.1949, 177 F.2d 107.*

6. — War bonus

A rider to shipping articles giving war bonus or emergency wage increase to licensed crew from crossing of 180th meridian westbound until crossing of 180th meridian eastbound, and providing that bonus is to be paid while employees are in war zones, requires payment of bonus to licensed crew in war zone from crossing of 180th meridian westbound until crossing of 180th meridian eastbound. *Griffin v. American President Lines, C.A.Cal.1949, 177 F.2d 111, certiorari denied 70 S.Ct. 838, 339 U.S. 951, 94 L.Ed. 1364.*

7. Association and union agreements

Under agreements between shipowners' association and maritime unions providing for payment of war risk bonus to licensed officers from crossing of 180th meridian westbound until recrossing of such meridian eastbound and for payment of bonus in event of internment of vessel to date of repatriation to continental United States port and for payment of bonus in war risk areas, war risk areas in which bonus is payable includes war risk of internment, and bonus is payable from crossing of 180th meridian westbound until recrossing of such meridian eastbound, but officers are not entitled to maintenance. *Griffin v. American President Lines, C.A.Cal. 1949, 177 F.2d 111, certiorari denied 70 S.Ct. 838, 339 U.S. 951, 94 L.Ed. 1364.*

§ 677. Production of copy of list on return of vessel; production of persons named

The master of every vessel bound on a foreign voyage or engaged in the whale fishery shall exhibit the certified copy of the list of the crew to the first boarding officer at the first port in the United States at which he shall arrive on his return, and also produce the persons named therein to the boarding officer, whose duty it shall be to examine the men with such list and to report the same to the collector; and it shall be the duty of the collector at the port of arrival, where the same is different from the port from which the vessel originally sailed, to transmit a copy of the list so reported to him to the collector of the port from which such vessel originally sailed. For each failure to produce any person on the certified copy of the list

of the crew the master and owner shall be severally liable to a penalty of \$400, to be sued for, prosecuted, and disposed of in such manner as penalties and forfeitures which may be incurred for offenses against the laws relating to the collection of duties; but such penalties shall not be incurred on account of the master not producing to the first boarding officer any of the persons contained in the list who may have been discharged in a foreign country with the consent of the consul or vice consul there residing, certified in writing, under his hand and official seal, to be produced to the collector with the other persons composing the crew, nor on account of any such person dying or absconding or being forcibly impressed into other service of which satisfactory proof shall also be exhibited to the collector. R.S. § 4576; Mar. 3, 1897, c. 389, § 3, 29 Stat. 688; Apr. 5, 1906, c. 1366, § 3, 34 Stat. 100.

Historical Note

Derivation. Act Feb. 23, 1803, c. 2, § 1, 2 Stat. 203.

Codification. The words "commercial agent, or vice commercial agent" following "vice-consul" were omitted from the Code upon the abolition of the grade of commercial agent by Act Apr. 5, 1906.

Act Mar. 3, 1897 amended this section by material changes which consisted of

the omission of the words "shall enter into bond, with sufficient security, in the sum of four hundred dollars, that he" preceding the words "shall exhibit," the insertion of the provisions of the second sentence preceding the semi-colon; and the substitution of the words "but such penalties shall not be incurred" for the words "but such bond shall not be forfeited."

Notes of Decisions

Bond under prior law 1
Deserters, apprehension of 2
Discharge before consul 3
Foreigners shipped abroad 4
Seaman separated from vessel 5
Vessel sold abroad 6

1. Bond under prior law

See *Taber v. U. S.*, C.C.Mass.1839, Fed. Cas.No.13,722; *U. S. v. Page*, D.C.N.Y. 1847, Fed.Cas.No.15,986a.

2. Deserters, apprehension of

It is the duty of the master to find and apprehend all deserters of seamen leaving the ship openly. *U. S. v. Page*, D.C.N.Y.1847, Fed.Cas.No.15,986a.

3. Discharge before consul

To protect himself, under this section, master discharging seaman in foreign port must secure consent of consul. *McAvey v. Emergency Fleet Corporation*, D.C.Mass.1926, 15 F.2d 405.

Proceeding before consul relative to discharge of seaman in foreign port, which resulted adversely to seamen, was not basis for action for malicious prosecution. *Id.*

Where a master procures the discharge of a seaman by a United States consul, in a foreign port, if any deceit or collusion has been practiced by the master in obtaining the discharge, he can claim no benefit or immunity under it; when there is no evidence of improper conduct on the part of the master in obtaining a seaman's discharge by a consul, and it appears that the consul has proceeded fairly, and on clear prima facie proofs has ordered the seaman to be discharged for criminal conduct, such discharge itself is a bar to any continuing claim for wages which might be enforced if the seaman's connection with the vessel still subsisted; and the propriety of the consul's interference is to be determined upon the facts before him, and not by the case which may be afterward shown upon a trial. *Tingle v. Tucker*, C.C.N.Y.1849, Abb.Adm. 519, Fed.Cas.No.14,057.

The certificate of the consul to excuse the master under this section must state that the seamen were left in a foreign port with his consent and a certificate that they were left in a hospital unable to return, and that the master had paid for their maintenance, and left the amount of their wages, was insufficient, and parol evidence of the consent of the

consul or seamen inadmissible. *U. S. v. Hatch*, C.C.N.Y.1824, 1 Paine 336, Fed. Cas.No.15,325.

4. Foreigners shipped abroad

This section, so far as it is applicable to the return of seamen, does not apply to the case of foreigners shipped in their own country for a distinct voyage or part of voyage ending in their port of shipment. *U. S. v. Parsons*, C.C.Mass. 1866, 1 Lowell 107, Fed.Cas.No.16,002.

5. Seaman separated from vessel

This section does not extend to cases where the seaman is lawfully separated

from the ship, or is separated from her without the fault of the master or owner; it applies to those cases only where the vessel returns to a port of the United States, to cases where the seamen continue subject to the lawful authority of the master, and where it was in his power to bring them home. *Montell v. U. S.*, C.C.Md.1840, Taney 24, Fed.Cas. No.9,723.

6. Vessel sold abroad

This section does not embrace the case of a vessel sold in a foreign port, and which does not return to the United States. *Montell v. U. S.*, C.C.Md.1840, Taney 24, Fed.Cas.No.9,723.

§ 678. Subsistence to destitute seamen; return to United States

It shall be the duty of the consuls and vice consuls, from time to time, to provide for the seamen of the United States, who may be found destitute within their districts, respectively, sufficient subsistence and passages to some port in the United States, in the most reasonable manner, at the expense of the United States, subject to such instructions as the Secretary of State shall give. The seamen shall, if able, be bound to do duty on board the vessels in which they may be transported, according to their several abilities. R.S. § 4577; Apr. 5, 1906, c. 1366, § 3, 34 Stat. 100.

Historical Note

Derivation. Act Feb. 28, 1893, c. 9, § 4, 2 Stat. 204.

Codification. The words "commercial agents and vice-commercial agents" fol-

lowing "vice-consuls", were omitted from the Code upon the abolition of the grade of commercial agent by Act Apr. 5, 1906.

Cross References

Abandonment of officer or mariner in foreign port, penalty, see section 2195 of Title 18, Crimes and Criminal Procedure.

Neglect, by any consul, of the duties imposed upon him by the laws regulating the shipment and discharge of seamen, etc., see section 1199 of Title 22, Foreign Relations and Intercourse.

Profits from dealings with discharged seamen prohibited, see section 1187 of Title 22, Foreign Relations and Intercourse.

Notes of Decisions

Deductions from wages 3
Duties, seaman to perform 3
General maritime law as modified 1
Ransom, expenditures for 4
Seamen within section 5-8
Generally 5
Fishing vessels 6
Return, status upon 7
War vessels 8

Transportation expense
Instructions 9
Recovery by government 10

1. General maritime law as modified
The general maritime law, which, in a case of *seminaufragum*, or where the

vessel was condemned and sold as too unseaworthy to be repaired, gave discharged seamen passage home and wages up to the time of reaching home, is modified by the statutes of the United States, which provide for all cases of discharge of seamen in foreign ports, and, in case of destitute seamen, their return home, by the consular agents of the United States, at the expense of a fund derived from the one-third of the three months' extra wages collected by the consuls or agents from all American ships discharging seamen in foreign ports, except where ships are stranded or wrecked or condemned as unfit for service. *Kelly v. Otis*, C.C.La.1885, 23 F. 903.

2. Deductions from wages

Where a United States consul general has provided shipwrecked, destitute seamen with food, clothing, and passage to a port in this country, the amount so expended should not be deducted by a United States shipping commissioner in this country, from the wages of such seamen paid by the owners of the vessel. 1894, 21 Op.Atty.Gen. 25.

The owners of an American vessel wrecked on the South Pacific Ocean, whose master paid the United States consul for clothing supplied the crew, out of the wages due the crew, they having subsequently recovered judgment for their wages in a United States court, have no valid claim against the United States for the money paid by the consul, the remedy, if any, being against the consul and the sureties on his bond. 1887, 19 Op.Atty.Gen. 22.

3. Duties, seaman to perform

Under the provisions of this section, seamen discharged in a foreign port because of disabling of their ship, and furnished transportation to a home port, are not entitled to wages for duty required of them on the home-bound vessel. *The Quaker City*, D.C.Md.1923, 290 F. 409.

A distressed American seaman, sent home on board an American vessel, his fare being paid by the American consul, is bound to do duty as a seaman when called upon by the mate of the vessel. *U. S. v. Salisbury*, C.C.N.Y.1843, Fed.Cas.No.16,214.

4. Ransom, expenditures for

Expenditures for the ransom of the crew and passengers of a wrecked American vessel, held prisoners by the Indians of Queen Charlotte's Island, did not come within the scope of the appropriations for the relief of American seamen, administered by the Secretary of State. 1853, 6 Op.Atty.Gen. 126.

5. Seamen within section—Generally

Where government-owned steamship was wrecked and sunk in Arabian Sea, part of crew proceeding to England were not, under this section, entitled to transportation allowance. *Villigas v. U. S.*, D.C.N.Y.1922, 8 F.2d 300.

An alien who is employed as a seaman on an American vessel and who has been discharged at a foreign port because of sickness, is entitled under this section to be returned to the United States. *The Santa Elena*, D.C.N.Y.1920, 271 F. 347.

Where vessel was in bad condition and was ordered into port and libels were filed so that voyage was not completed but there was no evidence of improper discharge of members of crew and vessel was not a loss or wreck, the members of crew were not entitled to passage money back to port from which they shipped. *The Herbert L. Rawding*, D.C.S.C.1944, 55 F.Supp. 156.

Where member of crew was arrested in Germany and served prison sentence, his former position as member of crew gave him no right to have vessel owner repatriate him and transport him without charge to the United States after he was released from German prison, and if he was destitute, the obligation rested by this section upon the United States to provide subsistence and passage. *Dick v. U. S. Lines Co.*, D.C.N.Y.1941, 38 F. Supp. 685.

Foreigners employed as seamen in American merchant ships are seamen "of the United States," within the meaning of the statute. *Matthews v. Offley*, C.C. Mass.1837, Fed.Cas.No.9,290.

A Puerto Rican engaged in the occupation of a seaman in the American merchant marine, including that of Puerto Rico, is an American seaman within the meaning of the sections of this title relating to relief by consuls, in view of the provisions of sections 734 and 744 of Title 48, providing a civil government for Puerto Rico. 1901, 23 Op.Atty.Gen. 400.

A place at which vessels of the United States receive their character as such, and where American shipping commissioners ship the crews of such vessels, is to be regarded as a place such that a person domiciled there and engaging in the occupation of a seaman on vessels of that character is an American seaman within the intent of the provisions for the relief and protection, in foreign countries, of American seamen. *Id.*

American seamen shipped in a British vessel, and, in consequence of its being

wrecked, were left in a foreign port destitute, were entitled to the relief provided in this section. 1852, 5 Op.Att'y.Gen. 547.

4. — Fishing vessels

The crew of an American fishing vessel are seamen within the meaning of this section, and the cost of transportation to the United States of the destitute crew of such a vessel, furnished by a United States consul, is a proper charge against the appropriation for the "relief and protection of American seamen in foreign countries." 1908, 26 Op.Att'y.Gen. 631.

7. — Return, status upon

Returned seamen as "American seamen" within the immigration laws. The Santa Elena, D.C.N.Y.1920, 271 F. 347.

8. — War vessels

Seamen on board ships of war are not entitled to pecuniary assistance from consuls under sections 1173, 1175 and 1176 of Title 22, section 311 of Title 31, section 721 of this title, and this section. 1841, 3 Op.Att'y.Gen. 685.

Seamen on board vessels of war are not entitled to pecuniary assistance from consuls abroad under the statute. 1841, 3 Op.Att'y.Gen. 683.

The moneys in the hands of the Secretary of State were raised from the wages of merchant seamen only, and should be applied only for the relief of that class of seamen which have contributed to the fund. Id.

9. Transportation expense—Instructions

The public interest requiring that American seamen should not be dis-

charged abroad, nor set on foreign shores in foreign ports, where they may be tempted to enter into foreign employment, to the loss of our service, the government has given instructions to commanders to send home their discharged seamen at the expense of the United States. 1831, 2 Op.Att'y.Gen. 468.

10. — Recovery by government

An American seaman, disabled in the service of the vessel, and who was left in a hospital at a foreign port, is entitled to medical expenses incident to a recovery from the injury and transportation back to the United States, and where these expenses are paid out of funds belonging to the United States, after notice to the owners of the vessel that they were liable for the same and demand made for payment, the owners of the vessel may be held liable therefor. 1911, 29 Op.Att'y.Gen. 56.

Where the destitution of the crew has resulted from the vessel owner's fault or misconduct, and that fact has been established, there would seem to be a right of recovery in the United States upon general principles of law for the cost of subsistence and transportation furnished under this section. 1908, 26 Op.Att'y.Gen. 631.

The question whether a suit by the government to enforce recovery from the vessel owners of the expense thus expended would be successful in speculative and hypothetical and beyond the power and functions of the Attorney General under the statutes to answer and the question of the actual liability of the vessel owners is judicial in its nature, and must be determined by the courts. Id.

§ 679. Transportation of destitute seamen to United States

All masters of vessels of the United States and bound to some port of the same, are required to take such destitute seamen on board their vessels, at the request of consular officers, and to transport them to the port in the United States to which such vessel may be bound, on such terms, not exceeding \$10 for each person for voyages of not more than thirty days, and not exceeding \$20 for each person for longer voyages, as may be agreed between the master and the consular officer, when transportation is by a sailing vessel; and the amount agreed upon between the consular officer and the master of the vessel in each individual case not in excess of the lowest passenger rate of such vessel and not in excess of 2 cents per mile shall in each case constitute the lawful rate for transportation on steam vessels; and said consular officer shall issue certificates for

such transportation, which certificates shall be assignable for collection. Every such master who refuses to receive and transport such seamen on the request or order of such consular officer shall be liable to the United States in a penalty of \$100 for each seaman so refused. The certificate of any such consular officer, given under his hand and official seal, shall be presumptive evidence of such refusal in any court of law having jurisdiction for the recovery of the penalty. No master of any vessel shall, however, be obliged to take a greater number than one man to every one hundred tons burden of the vessel on any one voyage or to take any seaman having a contagious disease.

Reasonable compensation, in addition to the allowances provided herein, or any allowance now fixed by law, or by regulations now or hereafter established in accordance with section 1752 of the Revised Statutes of the United States, may be paid from general appropriations for the relief and protection of American seamen, when authorized by the Secretary of State, in the following cases:

First. If any such destitute seaman is so disabled or ill as to be unable to perform duty, the consular officer shall so certify in the certificate of transportation, and such additional compensation shall be paid as the Secretary of State shall deem equitable and proper.

Second. Whenever distressed or destitute seamen of the United States are transported from foreign ports where there is no consular officer of the United States, or from points on the high seas, to ports of the United States, or from such foreign ports or points on the high seas to a port accessible to a consular officer of the United States who is authorized to assume responsibility on behalf of the Government of the United States for the further relief and repatriation of such seamen, there shall be allowed to the master or owner of each vessel in which they are transported such reasonable compensation as shall be deemed equitable by the Secretary of State. R.S. § 4578; June 26, 1884, c. 121, § 9, 23 Stat. 55; June 19, 1886, c. 421, § 18, 24 Stat. 83; July 31, 1894, c. 174, § 4, 28 Stat. 205; June 10, 1921, c. 18, § 304, 42 Stat. 24; May 7, 1930, c. 227, 46 Stat. 261.

Historical Note

Derivation. Act Feb. 23, 1803, c. 9, § 4, 2 Stat. 204.

References in Text. R.S. § 1752, referred to in the text, was repealed by Act Aug. 13, 1946, c. 957, Title XI, § 1131(18), 60 Stat. 1036.

Codification. This section as enacted originally read: "All masters of vessels belonging to citizens of the United States, and bound to some port of the same, are required to take such destitute seamen on board of their vessels, at the request of the consuls, vice-consuls, commercial agents, or vice-commercial agents, respectively, and to transport

them to the port in the United States to which such vessel may be bound, on such terms, not exceeding ten dollars for each person, as may be agreed between the master and the consul or officer. Every such master who refuses the same on the request or order of such consul or officer shall be liable to the United States in a penalty of one hundred dollars for each seaman so refused. The certificate of any such consul or officer, given under his hand and official seal, shall be presumptive evidence of such refusal, in any court of law having jurisdiction for the recovery of the penalty. No master of any vessel shall

however, be obliged to take a greater number than two men to every one hundred tons burden of the vessel, on any one voyage."

Act June 28, 1884 amended section to read substantially as above set forth.

Act June 19, 1886, added, after the words, "as may be agreed between the master and the consular officer," the words, "when the transportation is by a sailing vessel; and the regular steerage-passenger rate, not to exceed two cents per mile, when the transportation is by steamer," and at the end of the section the words "or to take any seaman having a contagious disease."

Act July 31, 1894 substituted the words "Comptroller General of the United States" for "First Comptroller of the Treasury".

Act June 10, 1921 transferred duties of the First Comptroller of the Treasury to the General Accounting Office, created by said Act under the control and direction of the Comptroller General.

A provision concerning the rate for transportation by steam vessels was omitted as superseded by section 680 of this title.

1930 Amendment. Act May 7, 1930 amended section to read as above set forth.

Notes of Decisions

Consul

Certificate 2

Decision of 1

Crimes, seamen accused of 3

Deserters 4

Half-way passage 5

Illness, effect of 6

Owners of vessels 7

Penalty, action for 8

Reimbursement by government 9

Review 12

Subrogation 11

Transportation, rules governing generally 10

1. Consul—Decision of

Under Act Feb. 23, 1803, from which this section is derived, providing for the recovery of a penalty where a master refuses to take destitute seaman on board, the consul is the proper judge as to what ship shall bring to the United States a destitute seaman. *Matthews v. Offley*, C.C.Mass.1837, Fed.Cas.No.9,290.

2. — Certificate

Certificate by Deputy Collector of Customs in Alaska, where there are no consular officers of the United States, was good under this section in view of administrative construction of this section. *Alaska S. S. Co. v. U. S.*, Wash. 1933, 54 S.Ct. 159, 290 U.S. 256, 78 L.Ed. 302.

Action by steamship company against United States for expenditures in caring for shipwrecked seamen could not be maintained, where the expenditures sought to be recovered did not carry consular validation. *American Scantic Line v. U. S.*, D.C.N.Y.1939, 27 F.Supp. 271.

In action for penalty under this section the certificate of the consul is prima facie evidence of the facts. *Matthews v. Offley*, C.C.Mass.1837, Fed.Cas.No.9,290.

3. Crimes, seamen accused of

Shipmasters in foreign ports are subject, on the requisition of the consul, to take on board and convey to the United States distressed mariners; but not seamen or other persons accused of crimes, and to be transported to the United States for prosecution. 1856, 7 Op.Att'y. Gen. 722.

4. Deserters

The fact that the seaman had deserted from a ship still in port did not prevent the consul from requiring another ship to bring him home. *Matthews v. Offley*, C.C.Mass.1837, Fed.Cas.No.9,290.

5. Half-way passage

Although the government will pay for bringing home seamen who have been discharged in foreign ports, yet where a merchantman received a seaman on board for the purpose of bringing him home, and brought him only half the way, when he voluntarily left, the captain cannot justly claim full pay for the voyage, but only a compensation for the distance he brought him. 1831, 2 Op.Att'y.Gen. 468.

6. Illness, effect of

Where seaman became ill during voyage and was refused re-employment after discharge from hospital as fit for duty, employers were liable for his transportation back to port at which he joined vessel, though refusal to re-employ

him was justified. *Miller v. U. S.*, D.C. N.Y.1943, 51 F.Supp. 924.

7. Owners of vessels

Steamship owner had no duty to provide transportation for seamen of its own wrecked vessel to United States; nor was undertaking under this section of government to compensate for transportation of such seamen conditioned upon transportation of seamen upon vessels other than those of owner of wrecked vessel. *Alaska S. S. Co. v. U. S.*, Wash.1933, 54 S.Ct. 159, 290 U.S. 256, 78 L.Ed. 302.

Owner of shipwrecked vessel did not have duty to repatriate shipwrecked seamen even though it had other vessels available for that purpose, but statutory obligation of the United States to repatriate the seamen was unequivocal. *American Mail Line v. U. S.*, 1945, 59 F.Supp. 921, 105 Ct.Cl. 1.

The proviso in the Appropriation Act fiscal year 1935, Act Apr. 7, 1934, 48 Stat. 529, 533, that no part of appropriation should be available for payment to steamship owners or operators for transporting destitute or shipwrecked seaman whose last service was on a vessel of such owner or operator and was not terminated by desertion, did not prevent steamship company repatriating destitute seamen from recovering from United States. *American Scantic Line v. U. S.*, D.C.N.Y.1939, 27 F.Supp. 271.

Where members of crew overstayed shore leave in foreign port and failed to return before vessel sailed, vessel could leave them to their own devices and shift the responsibility for their repatriation to American Consul. *Burns v. Blidberg Rothchild Co.*, 1949, 91 N.Y.S.2d 55, 195 Misc. 625.

8. Penalty, action for

An action for a forfeiture or penalty must be in the name of the government, unless otherwise expressly provided by this section. *Matthews v. Offley*, C.C. Mass.1837, Fed.Cas.No.9,290.

An action against a master for the penalty given by Act Feb. 28, 1803, from which this section is derived, for refusing to bring destitute seamen to the United States must be brought in the name of the United States, and not of the consul. *Id.*

9. Reimbursement by government

Government was liable to owner of wrecked vessel, to whom Alaskan deputy collector of customs issued certificate, for expense of transporting shipwrecked

seamen from Alaska to United States. *Alaska S. S. Co. v. U. S.*, Wash.1933, 54 S.Ct. 159, 290 U.S. 256, 78 L.Ed. 302.

Where United States had unqualified duty to pay for cost of repatriation of shipwrecked seamen but repudiated that duty and owner of shipwrecked vessel, under protest and without acknowledging liability for caring for them, arranged with an affiliate to carry them back to the United States, the plaintiff affiliate did not act as a volunteer and was entitled to recover cost of repatriation from the United States, since the United States could not take advantage of its own wrong. *American Mail Line v. U. S.*, 1945, 59 F.Supp. 921, 105 Ct.Cl. 1.

Where no contract was entered into for repatriation of shipwrecked seamen in advance of rendition of the service by plaintiff but afterwards agent of United States, who was authorized to enter into the contract, ratified what had been done and issued a certificate which complied in all essential respects with this section imposing unqualified duty on United States to pay for cost of repatriation, plaintiff was entitled to collect such cost. *Id.*

Steamship company was entitled to recover \$2,144 for repatriation of shipwrecked seamen returned to United States. *American Scantic Line v. U. S.*, D.C.N.Y.1939, 27 F.Supp. 271.

Owners of wrecked vessel voluntarily spending money for subsistence and necessities for crew were not entitled to recover such amount from the United States. *American Scantic Line, Inc. v. U. S.*, D.C.N.Y.1933, 5 F.Supp. 410.

Owners of wrecked vessel transporting members of crew to the United States were entitled to recover transportation charges from government regardless of ownership of wrecked vessel. *Id.*

10. Transportation, rules governing generally

To require all American vessels in foreign ports, whether bound directly to some port of the United States or not, to receive destitute seamen would in many cases be very oppressive upon masters and owners. 1843, 4 Op.Atty.Gen. 185.

Act Feb. 28, 1803, from which this section is derived, requiring masters of vessels belonging to citizens of the United States, and bound to some port of the same to take, at the request of the consul, destitute seamen on board, and to transport them to the port of the United

States to which such vessel may be bound, was limited to such vessels as should be bound from the port where the request was made direct to some port in the United States. *Id.*

11. Subrogation

Shipwrecked seamen had right under this section and sections 593, 678 of this title to be taken back to their homes at expense of United States and where the obligation was repudiated by United States and another was compelled to discharge it, that person was subrogated to the seamen's rights to collect cost from United States. *American Mail Line v. U. S.*, 1945, 59 F.Supp. 921, 105 Ct.Cl. 1.

12. Review

On review of judgment denying owner of wrecked steamship compensation for transporting its destitute seamen, Supreme Court would not consider to what extent rights of seamen to wages payable from freight earned on voyage or to wages or salvage from vessel they have helped to save, survived sections of this title regulating duties of owner toward seamen where there was no evidence or finding that wrecked vessel had earned freight on her voyage, or had been salvaged with or without aid of her seamen. *Alaska S. S. Co. v. U. S.*, Wash. 1933, 54 S.Ct. 159, 290 U.S. 253, 73 L.Ed. 302.

§ 680. Rate for transportation of destitute seamen to United States on steam vessels

Historical Note

Codification. Section, Acts June 1, 1922, c. 204, Title I, 42 Stat. 603; Jan. 3, 1923, c. 21, Title I, 42 Stat. 1072, is now covered by section 679 of this title.

§ 681. Repealed. May 7, 1930, c. 227, 46 Stat. 261

Historical Note

Section, R.S. § 4579; Acts July 31, 1894, c. 174, § 4, 28 Stat. 205; June 10, 1921, c. 18, § 304, 42 Stat. 24, provided for additional compensation for transporting distressed seamen.

INDEX TO TITLE 46—SHIPPING

For complete Index to this title, including Material
in this volume, see volume containing:
Section 801 to End

END OF VOLUME

UNITED STATES CODE ANNOTATED

Title 46
Shipping
§§ 251 to 681

1987
Cumulative Annual Pocket Part

Replacing 1986 pocket part in back of volume

Includes the Laws of the
99th CONGRESS, SECOND SESSION (1986)

For close of Notes of Decisions
See page III

For Later Laws and Cases
Consult
USCA
Supplementary Pamphlet Service

For Partially Revised Title 46

See 1987 Special Pamphlet

ST. PAUL, MINN.

WEST PUBLISHING CO.

COPYRIGHT © 1958 through 1986 WEST PUBLISHING CO.

COPYRIGHT © 1987

By

WEST PUBLISHING CO.

UNITED STATES CODE ANNOTATED, U.S.C.A. and USCA
are registered trademarks of West Publishing Co.
Registered in U.S. Patent and Trademark Office.

EXPLANATION

This Cumulative Annual Pocket Part contains the laws of a general and permanent nature enacted by the Congress through Public Law 99-664, the final law of the Second Session of the 99th Congress which adjourned on October 18, 1986. This Pocket Part also includes Executive Orders, Proclamations and Reorganization Plans affecting such general and permanent laws.

Title 46 was partially revised and enacted into positive law by Pub.L. 98-39, Aug. 26, 1983, 97 Stat. 500 and Pub.L. 99-509, Oct. 21, 1986, 100 Stat. 1913. Pub.L. 98-89 enacted Subtitle II, Parts A, B, and D to I, of the new Title 46 and Pub.L. 99-509 enacted Subtitle II, Parts C and J. Both laws repealed the corresponding provisions of other laws. For disposition of all sections of present Titles 33 and 46 affected by the partial revision, see Tables beginning on page VII in the Pocket Part to the first volume of Title 46. For text of the partially revised Title 46, see Special Pamphlet.

The laws are classified to the United States Code. Under the same classification will be found the annotations from the decisions of the State and Federal courts, the Comptroller General, and the United States Merit Systems Protection Board, and the opinions of the Attorney General construing the statutes.

The annotations close with the following:

Supreme Court Reporter	107 S.Ct. 333
United States Reports	471 U.S. (part)
Federal Reporter, Second Series	802 F.2d 473
U.S. Court of Appeals, Dist. of Columbia	253 U.S.App.D.C.
Federal Supplement	643 F.Supp. 1149
Federal Rules Decisions	111 F.R.D. 263
Atlantic Reporter, Second Series	515 A.2d 1078
California Reporter	230 Cal.Rptr. 655
New York Supplement, Second Series	506 N.Y.S.2d 852
North Eastern Reporter, Second Series	498 N.E.2d 289
North Western Reporter, Second Series	393 N.W.2d 799
Pacific Reporter, Second Series	726 P.2d 101
South Eastern Reporter, Second Series	348 S.E.2d 880
Southern Reporter, Second Series	495 So.2d 22
South Western Reporter, Second Series	717 S.W.2d 192
Opinions Attorney General	48 Op.Atty.Gen. (part)
Decisions Comptroller General	64 Op.Comp.Gen. (part)
United States Merit Systems Protection Board Reporter	31 M.S.P.R. 626
Claims Court Reporter	10 Cl.Ct. 810
Court of Claims	228 Ct.Cl.
Court of International Trade	12 C.I.T. (part)
Customs Court	85 Cust.Ct.
United States Tax Court	86 Tax Ct. (part)

Military Justice Reporter.....	23 M.J.
	#1 Mil.App. p. 42
	#1 Mil.Rev. p. 556
Bankruptcy Reporter	65 B.R. 311
Other Standard Reports	

For subsequent judicial constructions, pending the publication of the next supplementary service, see Table of Statutes Construed in the later permanent volumes and weekly Advance Sheets of the Reporters listed above.

Later statutes and judicial constructions and interpretations will be cumulated in subsequent pamphlets and annual pocket parts.

Cite this Pocket Part by Title Number
and Section Thus: — U.S.C.A. § —

TITLE 46

SHIPPING

Chapter	Section
7. Carriage of Explosives or Dangerous Substances [Repealed]	170
9. Log Books [Repealed]	201
10. Regulation of Pilots and Pilotage [Repealed]	211
10A. Regulation of Great Lakes Pilots and Pilots and Pilotage [Repealed]	216
16. Regulation of Motor Boats [Repealed]	511
30. Peonage and Slave Trade Punished by Seizures and Forfeitures [Repealed]	1351
31. Maritime Academy Program	1381
32. Construction Assistance for Fishing Vessels	1401
33. Coordinated National Recreational Boating Safety and Facilities Improvement Program [Repealed]	1451
34. Safe Containers for International Cargo	1501
35. Maritime Administration	1601
36. International Ocean Commerce Transportation	1701
37. International Maritime and Port Security [New]	1801
38. Maritime Drug Law Enforcement [New]	1901

CHAPTER 12—REGULATION OF VESSELS IN DOMESTIC COMMERCE

Sec.	Sec.
251a. Remission or mitigation of fines, penalties or forfeitures.	eign-flag vessels; unavailability of U.S. flag service.
251b. Regulations.	(a) Authorization of transportation.
252 to 255. Repealed.	(b) Notification by Secretary; termination of services.
258 to 261. Repealed.	(c) Extension of termination period.
263 to 273. Repealed.	(d) Reinstatement of coastwise privileges.
275, 276. Repealed.	(e) Definition.
278 to 280. Repealed.	316. Use of foreign vessels in United States ports.
288. Repealed.	(a) Towing vessels.
289b. Transportation of passengers and merchandise in Canadian vessels between points in Alaska and United States.	(b) to (e) [See main volume for text].
289c. Transportation of passengers between Puerto Rico and other U.S. ports; for-	318. Repealed.
	329 to 335. Repealed.

§ 251. Vessels employed in coasting trade or fisheries

(a) Landing of catch of fish by foreign-flag vessels

Except as otherwise provided by treaty or convention to which the United States is a party, no foreign-flag vessel shall, whether documented as a cargo vessel or

otherwise, land in a port of the United States its catch of fish taken on board such vessels on the high seas or fish products processed therefrom, or any fish or fish products taken on board such vessel on the high seas from a vessel engaged in fishing operations or in the processing of fish or fish products.

(b) Sale or transfer for immediate consumption

Subsection (a) of this section shall not be deemed to prohibit the landing by a foreign-flag vessel of not more than fifty feet overall length in a port of the Virgin Islands of the United States for immediate consumption in such islands of its catch of fresh fish, whole or with the heads, viscera, or fins removed, but not frozen, otherwise processed, or further advanced. No fish landed under this authorization shall be sold or transferred except for immediate consumption. Sale or transfer to an agent, representative, or employee of a freezer or cannery shall be deemed to be prohibited in the absence of satisfactory evidence that such sale or transfer is for immediate consumption. For the purposes of this subsection, the term "immediate consumption" shall not preclude the freezing, smoking, or other processing of such fresh fish by the ultimate consumer thereof.

(c) Forfeitures and penalties

Any fish landed in the Virgin Islands of the United States which are retained, sold, or transferred other than as authorized in subsection (b) of this section shall be liable to forfeiture and any person or persons retaining, selling, transferring, purchasing, or receiving such fish shall severally be liable to a penalty of \$1,000 for each offense, in addition to any other penalty provided in law.

(As amended Sept. 13, 1961, Pub.L. 87-220, § 1, 75 Stat. 493; Aug. 15, 1979, Pub.L. 96-61, § 2, 93 Stat. 407; Dec. 24, 1980, Pub.L. 96-594, Title I, §§ 126(b), 128, 94 Stat. 3459.)

1980 Amendment. Subsec. (a). Pub.L. 96-594 struck out provisions relating to vessels entitled to privileges of vessels employed in coasting trade or fisheries, and provisions defining the term "fisheries".

1979 Amendment. Subsec. (a). Pub.L. 96-61 defined term "fisheries".

1961 Amendment. Pub.L. 87-220 designated existing provisions as subsec. (a), and added subsecs. (b) and (c).

Effective Date of 1980 Amendment. Amendment by Pub.L. 96-594 effective on the first day of the eighteenth month following the month title I of Pub.L. 96-594 was enacted, December, 1980, see section 128 of Pub.L. 96-594, set out as a note under section 65 of this title.

Landing of Catch of Fish by Foreign-flag Vessels. Provisions of this section prohibiting the landing of fish in United States ports by foreign-flag vessels direct from fishing grounds unaffected, see section 6 of Pub.L. 87-314, set out as a note under section 951 of Title 16, Conservation.

Cross References

Fishing vessels; transfer and transportation of catch of other vessels, see section 404a of this title.

Legislative History: For legislative history and purpose of Pub.L. 87-220, see 1961 U.S. Code Cong. and Adm. News, p. 2640.

West's Federal Forms

Forfeitures in admiralty, see § 11105 et seq.

Code of Federal Regulations

Application, see 19 CFR 4.80, 4.96.

Library References

Fish ⇐ 8.

Shipping ⇐ 14.

C.J.S. Fish § 26.

C.J.S. Shipping §§ 5, 6.

Notes of Decisions

3. Validity and operation of state laws

To same effect as third paragraph of original annotation, see *Smith v. State*, 1964, 391 P.2d 718, 64 Wash.2d 323.

4. — Taxation

Imposition of business and occupation tax was not precluded either by licensing and enrolling vessel operators for coastwise trade or placing them under regulation by Interstate Commerce Commission. *Smith v. State*, 1964, 391 P.2d 718, 64 Wash.2d 323.

§ 251a. Remission or mitigation of fines, penalties or forfeitures

Any fine, penalty, or forfeiture incurred under the provisions of this Act shall be subject to remission or mitigation in accordance with section 7 of this title.

(Pub.L. 87-220, § 2, Sept. 13, 1961, 75 Stat. 493.)

References in Text. Section 7 of this title, § 4(b), Aug. 26, 1983, 97 Stat. 600. See section referred to in text, was repealed by Pub.L. 98-89, 2107(b) of this title.

This Act, referred to in the text, probably means Pub.L. 87-220, which added subssecs. (b) and (c) to section 251 of this title, section 251b of this title, and this section.

Legislative History: For legislative history and purpose of Pub.L. 87-220, see 1961 U.S.Code Cong. and Adm.News, p. 2640.

§ 251b. Regulations

The Secretary of the Treasury may issue such regulations as he deems necessary for the enforcement of the provisions of this Act.

(Pub.L. 87-220, § 3, Sept. 13, 1961, 75 Stat. 493.)

References in Text. This Act, referred to in the text, probably means Pub.L. 87-220, which added subssecs. (b)(c) to section 251 of this title, section 251a of this title, and this section.

Legislative History: For legislative history and purpose of Pub.L. 87-220, see 1961 U.S.Code Cong. and Adm.News, p. 2640.

Library References

Fish §=14.

C.J.S. Fish § 38 et seq.

Library References

Fish §=8.

C.J.S. Fish § 26.

§§ 252 to 255, 258 to 260. Repealed. Pub.L. 96-594, Title I, § 127, Dec. 24, 1980, 94 Stat. 3459

Section 252, R.S. § 4312, set forth vessels which may be enrolled.

Section 253, R.S. § 4313, set forth enrollment of vessels owned by corporations.

Section 254, R.S. § 4314; Act June 24, 1902, c. 1155, § 2, 32 Stat. 399, related to oath as to corporate or individual ownership with respect to enrollment.

Section 255, R.S. § 4315; Act Feb. 27, 1877, c. 69, § 1, 19 Stat. 251, related to new enrollment on death, removal, or resignation of corporate officers.

Section 258, R.S. § 4318; Act Feb. 27, 1877, c. 69, § 1, 19 Stat. 251, related to enrollment of vessels on frontiers.

Section 259, R.S. § 4319; Acts Feb. 27, 1877, c. 69, § 1, 19 Stat. 251; Jan. 16, 1895, c. 24, § 1, 28 Stat. 624, set forth provisions relating to form of enrollment.

Section 260, Acts Apr. 24, 1906, c. 1865, § 1, 34 Stat. 136; Feb. 29, 1912, c. 47, 37 Stat. 70; Mar. 4, 1913, c. 141, § 1, 37 Stat. 736; June 30, 1932, c. 314, §§ 501, 502(b), 47 Stat. 415; May 27, 1936, c. 463, § 1, 49 Stat. 1380; 1946 Reorg. Plan No. 3, §§ 101 to 104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, set forth provisions relating to consolidation of enrollment and of license.

Effective Date of Repeal; Savings Provisions.

Sections repealed effective on the first day of the eighteenth month following the month Title I of Pub.L. 96-594 was enacted, December 1980, except with respect to rights and duties that matured, penalties that were incurred, and proceedings that were begun before such effective date, see sections 127 and 128 of Pub.L. 96-594, set out as notes under section 65 of this title.

§ 261. Repealed. Pub.L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 640

Section, Act Apr. 24, 1906, c. 1865, § 3, 34 Stat. 136, provided that the Act of which it was a

part should not be construed to amend laws then in force for compensation of customs officers.

§ 262. Trade of documented vessel not to defraud revenue laws

No documented vessel shall be employed in any trade whereby the revenue laws of the United States shall be defrauded.

(As amended Dec. 24, 1980, Pub.L. 96-594, Title I, § 126(c), 94 Stat. 3459.)

1980 Amendment. Pub.L. 96-594 substituted "documented" for "licensed", and struck out provisions respecting oaths required of master, etc.

Effective Date of 1980 Amendment. Amendment by Pub.L. 96-594 effective on the first day of the eighteenth month following the month title

I of Pub.L. 96-594 was enacted, December, 1980, see section 128 of Pub.L. 96-594, set out as a note under section 65 of this title.

Legislative History. For legislative history and purpose of Pub.L. 96-594, see 1980 U.S.Code Cong. and Adm.News, p. 7162.

Notes of Decisions

Defenses 3

3. Defenses

Buyer's failure to discover existence of federal law prohibiting his use, as a resident alien, of

vessel for commercial fishing within 200 miles of United States coast was not a mutual mistake of fact so as to render unenforceable a contract for sale of fishing vessel, which was not predicated upon buyer's ability to use the vessel for commercial fishing. *Hilbert v. Le*, Miss.1983, 434 So.2d 1354.

263 to 272. Repealed. Pub.L. 96-594, Title I, § 127, Dec. 24, 1980, 94 Stat. 3459

Section 263, R.S. § 4321; Act May 20, 1936, c. 434, 49 Stat. 1367, set forth provisions relating to form of license for vessels carrying on the coastal trade or fisheries.

Section 264, R.S. § 4322, related to exchange of enrollment and registry.

Section 265, R.S. § 4323; Acts July 5, 1884, c. 221, § 2, 23 Stat. 119; June 30, 1932, c. 314, §§ 501, 502(b), 47 Stat. 415; May 27, 1936, c. 463, § 1, 49 Stat. 1380; 1946 Reorg.Plan No. 3, §§ 101 to 104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, related to exchange of enrollment when vessel is in another district.

Section 266, R.S. § 4324, related to expiration of license.

Section 267, R.S. § 4325; Acts Apr. 24, 1906, c. 1865, § 2, 34 Stat. 136; May 31, 1939, c. 160, 53 Stat. 795; 1946 Reorg.Plan No. 3, §§ 101 to 104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, related to presentation of license for renewal by endorsement.

Section 268, R.S. § 4326, related to exemption from penalty for loss, etc., of license.

Section 269, R.S. § 4327, related to return and cancellation of license and issuance of new license.

Section 270, R.S. § 4328, Act Apr. 17, 1874, c. 106, 18 Stat. 30, related to renewal of license when vessel is in another district.

Section 271, R.S. § 4329; Acts Feb. 14, 1903, c. 552, § 10, 32 Stat. 829; Mar. 4, 1913, c. 141, § 1, 37 Stat. 736; 1946 Reorg.Plan No. 3, §§ 101 to 104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, set forth provisions relating to renewal of license when vessel is sold.

Section 272, R.S. § 4330, related to oath as to payment for repairs with respect to license, etc., issuance.

Effective Date of Repeal; Savings Provisions. Sections repealed effective on the first day of the eighteenth month following the month Title I of Pub.L. 96-594 was enacted, December 1980, except with respect to rights and duties that matured, penalties that were incurred, and proceedings that were begun before such effective date, see sections 127 and 128 of Pub.L. 96-594, set out as notes under section 65 of this title.

§ 273. Repealed. Pub.L. 89-476, § 2(d), June 29, 1966, 80 Stat. 230

Section, R.S. § 4331, provided for the measurement of vessels of five but less than twenty tons.

Effective Date of Repeal. Repeal of section effective upon the expiration of ninety days after

June 29, 1966, see section 3 of Pub.L. 89-476, set out as a note under section 71 of this title.

§ 274. Surveyor's return of manifests and permits certified or received

Transfer of Functions. All offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise in the Bureau of Customs of the Department of the Treasury to which appointments were required to be made by the President with the advice and consent of the Senate were ordered abolished, with such offices to be terminated not later than De-

cember 31, 1966, 67 Reorg.Plan No. 1 of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set out in the Appendix to Title 5, Government Organization and Employees. All functions of the offices eliminated were already vested in the Secretary of the Treasury by Reorg.Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5.

§§ 275, 276. Repealed. Pub.L. 96-594, Title I, § 127, Dec. 24, 1980, 94 Stat. 3459

Section 275, R.S. § 4333; Acts July 5, 1884, c. 221, § 2, 23 Stat. 119; June 30, 1932, c. 314, § 501, 47 Stat. 415; May 27, 1936, c. 463, § 1, 49 Stat. 1380; 1946 Reorg.Plan No. 3, §§ 101 to 104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, set forth provisions respecting recording of licenses.

Section 276, R.S. § 4335; Acts May 31, 1939, c. 159, 53 Stat. 794; 1946 Reorg.Plan No. 3,

§§ 101 to 104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097; Aug. 30, 1957, Pub.L. 85-237, § 1, 71 Stat. 517, set forth provisions relating to reports, etc., required upon change of master.

Effective Date of Repeal; Savings Provisions. Sections repealed effective on the first day of the eighteenth month following the month Title I of Pub.L. 96-594 was enacted, December 1980, ex-

cept with respect to rights and duties that matured, penalties that were incurred, and proceedings that were begun before such effective date,

see sections 127 and 128 of Pub.L. 96-594, set out as notes under section 65 of this title.

§ 277. Inspection of documents

Cross References

Definition of enrollment, license, or register with respect to vessel documentation, see section 65w of this title.

West's Federal Forms

Sentence and fine, see § 7531 et seq.

§§ 278 to 280. Repealed. Pub.L. 96-594, Title I, § 127, Dec. 24, 1980, 94 Stat. 3459

Sections, R.S. §§ 4337 to 4339, set forth provisions relating to penalty for unlawfully proceeding on foreign voyage, certificate for vessel proceeding on foreign voyage, and papers for vessels in whaling industry, respectively.

Effective Date of Repeal; Savings Provisions. Sections repealed effective on the first day of the

eighteenth month following the month Title I of Pub.L. 96-594 was enacted, December 1980, except with respect to rights and duties that matured, penalties that were incurred, and proceedings that were begun before such effective date, see sections 127 and 128 of Pub.L. 96-594, set out as notes under section 65 of this title.

§ 288. Repealed. Pub.L. 85-911, § 12, Sept. 2, 1958, 72 Stat. 1758, eff. Apr. 1, 1960

Section, Acts June 7, 1918, c. 93, §§ 1 to 5, 40 Stat. 602; Aug. 5, 1935, c. 438, Title II, § 210, 49 Stat. 526, related to numbering undocumented vessels and is now covered by section 527 et seq. of this title.

Repeals. Section 12 of Pub.L. 85-911, Sept. 2, 1958, 72 Stat. 1758, which repealed this section, was repealed by Pub.L. 92-75, § 41(a)(2), Aug. 10, 1971, 85 Stat. 228, and Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 604.

§ 289. Transportation of passengers in foreign vessels

Cross References

Transportation of passengers and merchandise in Canadian vessels between points in Alaska and United States, see section 289b of this title.

Code of Federal Regulations

Coastwise procedure, see 19 CFR 4.80 to 4.93 et seq.

or by way of foreign port where, in guaranteeing monopoly for domestic shippers, this section was intended to protect livelihood of American seamen. *Autolog Corp. v. Regan*, 1984, 731 F.2d 25, 235 U.S.App.D.C. 178.

5. Foreign ports

Bahamian corporation which shipped passengers from New York to Freeport and then from Freeport to Florida did not violate this section barring foreign-flag vessels from transporting passengers between United States ports either directly or by way of foreign port where passengers changed ships in Freeport. *Autolog Corp. v. Regan*, 1984, 731 F.2d 25, 235 U.S.App.D.C. 178.

Notes of Decisions

2. Purpose

Union representing seamen crewing American vessels was within zone of interests of this section barring foreign-flag vessels from transporting passengers between United States ports either directly

§ 289a. Transportation of passengers in Canadian vessels between Rochester and Alexandria Bay

Until such time as passenger service shall be established by vessels of the United States between the port of Rochester, New York, and the port of Alexandria Bay, New York, the Commissioner of Customs is authorized in his discretion to issue annually permits to Canadian passenger vessels to transport passengers between these ports; such Canadian vessels holding such permits not to be subject to the provisions of section 289 of this title.

(Apr. 26, 1988, c. 174, 52 Stat. 228; 1946 Reorg. Plan No. 3, §§ 101 to 104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.)

Library References

Shipping \S 162.C.J.S. Shipping $\S\S$ 175, 177.**§ 289b. Transportation of passengers and merchandise in Canadian vessels between points in Alaska and United States**

Notwithstanding the provisions of law of the United States restricting to vessels of the United States the transportation of passengers and merchandise directly or indirectly from any port in the United States to another port of the United States, passengers may be transported on Canadian vessels between ports in southeastern Alaska, and passengers and merchandise may be transported on Canadian vessels between Hyder, Alaska, and other points in southeastern Alaska, and between Hyder, Alaska, and other points in the United States outside Alaska, either directly or via a foreign port, or for any part of the transportation until the Secretary of Transportation determines that United States-flag service is available to provide such transportation.

(Pub.L. 97-31, § 12(22), Aug. 6, 1981, 95 Stat. 155.)

Prior Provisions. Temporary provisions which authorized transportation of passengers and merchandise in Canadian vessels between points in Alaska and United States, were contained in the following Acts:

1961—June 30, 1961, Pub.L. 87-77, 75 Stat. 196.

1960—Apr. 5, 1960, Pub.L. 86-410, 74 Stat. 16.

1959—July 31, 1959, Pub.L. 86-126, 73 Stat. 272.

1958—June 30, 1958, Pub.L. 85-473, 72 Stat. 244.

1957—July 11, 1957, Pub.L. 85-103, 71 Stat. 294.

1956—Apr. 18, 1956, c. 207, 70 Stat. 114.

1955—May 7, 1955, c. 35, 69 Stat. 47.

1954—June 29, 1954, c. 413, 68 Stat. 321.

1953—July 16, 1953, c. 201, 67 Stat. 175.

1952—June 11, 1952, c. 391, 66 Stat. 133.

1951—June 27, 1951, c. 153, 65 Stat. 90.

1950—June 29, 1950, c. 409, 64 Stat. 301.

1949—Aug. 22, 1949, c. 493, 63 Stat. 622.

Legislative History: For legislative history and purpose of Pub.L. 87-77, see 1961 U.S. Code Cong. and Adm. News, p. 2048. See, also, Pub.L. 97-31, 1981 U.S. Code Cong. and Adm. News, p. 92.

Library References

Shipping \S 13, 162.C.J.S. Shipping $\S\S$ 5-7, 175, 177.**§ 289c. Transportation of passengers between Puerto Rico and other U.S. ports; foreign-flag vessels; unavailability of U.S. flag service****(a) Authorization of transportation**

notwithstanding¹ any other provision of law, passengers may be transported on passenger vessels not qualified to engage in the coastwise trade between ports in Puerto Rico and other ports in the United States, directly or by way of a foreign port, except as otherwise provided in this section.

(b) Notification by Secretary; termination of services

¹ (1) Upon a showing to the Secretary of Transportation, by the vessel owner or charterer, that service aboard a United States passenger vessel qualified to engage in the coastwise trade is being offered or advertised pursuant to a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation (46 App. U.S.C. 817e) from the Federal Maritime Commission for service in the coastwise trade between ports in Puerto Rico and other ports in the United States, the Secretary shall notify the owner or operator of each vessel transporting passengers under authority of this section that he shall, within 270 days after notification, terminate all such service. Coastwise privileges granted to every owner or operator under this section shall expire on the 270th day following the Secretary's notification.

(2) Upon a showing to the Secretary, by the vessel owner or charterer, that service aboard a United States passenger vessel not qualified to engage in the coastwise trade is being offered or advertised pursuant to a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation (46 App. U.S.C. 817e) from the Federal Maritime Commission for service in the coastwise trade between ports in Puerto Rico and other ports in the United States,

the Secretary shall notify the owner or operator of each foreign-flag vessel transporting passengers under authority of this section that he shall, within 270 days after notification, terminate all such service. Coastwise privileges granted to every owner or operator of a foreign-flag vessel transporting passengers under authority of this section shall expire on the 270th day following the Secretary's notification.

(c) Extension of termination period

If, at the expiration of the 270-day period specified in subsections (b)(1) and (b)(2) of this section, the vessel that has been offering or advertising service pursuant to a certificate described in either of those subsections has not entered the coastwise passenger trade between ports in Puerto Rico and other ports in the United States, then the termination of service required by either of those subsections shall not be required until 90 days following the entry into that trade by the United States vessel.

(d) Reinstatement of coastwise privileges

Any coastwise privileges granted in this section that expire under subsection (b)(1) or (b)(2) of this section shall be reinstated upon a determination by the Secretary that the service on which the expiration of the privileges was based is no longer available.

(e) Definition

For the purposes of subsections (b)(1) and (b)(2) of this section, the term "passenger vessel" means any vessel of similar size or offering service comparable to any other vessel transporting passengers under authority of this section.

(Pub.L. 98-563, § 1, Oct. 30, 1984, 98 Stat. 2916.)

1 So in original. Probably should be "Notwithstanding".

References in Text. The Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation, referred to in subsec. (b), is provided for in section 817c of this title.

Legislative History. For legislative history and purpose of Pub.L. 98-563, see 1984 U.S. Code Cong. and Adm. News, p. 4866.

§ 292. Dredging by foreign-built dredges

Notes of Decisions

Maritime, coasting or coastwise trade 3
Navigation and coastwise laws 2
Purpose 1
Registration, sufficiency of 5
Virgin Islands 4

1. Purpose

This section is designed to protect American-built and American-documented ships from foreign competition in the domestic or coastwise trade. 42 Atty.Gen. August 7, 1963.

2. Navigation and coastwise laws

This section which prohibits a foreign-built dredge from engaging in dredging in the United States unless documented as a vessel of the United States, is both a navigation and a coastwise law of the United States. 42 Atty.Gen. August 7, 1963.

3. Maritime, coasting or coastwise trade

Dredging performed by or from vessels on navigable waters is maritime trade, and is coasting or coastwise trade when performed in domestic navigable waters. 42 Atty.Gen. August 7, 1963.

4. Virgin Islands

This section was not applied by Ex.Ord. 9170 of May 21, 1942, 7 F.R. 3842, and does not now apply to the Virgin Islands. 42 Atty.Gen. August 7, 1963.

5. Registration, sufficiency of

Registration of dredge, which was documented as United States vessel but certificate for which contained restrictive endorsement prohibiting its use in coastwise trade, and which was not engaged in "coastwise trade" while dredging valueless spoil pursuant to federal contract award, was adequate for particular work it performed. *Great Lakes Dredge & Dock Co. v. Ludwig*, D.C.N.Y.1980, 486 F.Supp. 1305.

§ 293a. Additional great district

Transfer of Functions. All offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise in the Bureau of Customs of the Department of the

Treasury to which appointments were required to be made by the President with the advice and consent of the Senate were ordered abolished, with such offices to be terminated not later than De-

ember 31, 1966, by Reorg. Plan No. 1 of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set out in the Appendix to Title 5, Government Organization and Employees. All functions of the

offices eliminated were already vested in the Secretary of the Treasury by Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5.

§ 306. Trade between Alaska and other districts

Admission of Alaska as State. Admission of Alaska into the Union was accomplished Jan. 3, 1959 upon issuance of Proc. No. 3269, Jan. 5, 1959, 24 F.R. 81, 73 Stat. c16, as required by

sections 1 and 8(c) of Pub.L. 85-508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

§§ 308, 309

Transfer of Functions. All offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise in the Bureau of Customs of the Department of the Treasury to which appointments were required to be made by the President with the advice and consent of the Senate were ordered abolished, with such offices to be terminated not later than De-

ember 31, 1966, by Reorg. Plan No. 1 of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set out in the Appendix to Title 5, Government Organization and Employees. All functions of the offices eliminated were already vested in the Secretary of the Treasury by Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5.

§ 310. Permit to touch at foreign port

Transfer of Functions. All offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise in the Bureau of Customs of the Department of the Treasury to which appointments were required to be made by the President with the advice and consent of the Senate were ordered abolished, with such offices to be terminated not later than December 31, 1966, by Reorg. Plan No. 1 of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set

out in the Appendix to Title 5, Government Organization and Employees. All functions of the offices eliminated were already vested in the Secretary of the Treasury by Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5.

Code of Federal Regulations

Coastwise procedure, see 19 CFR 4.80 to 4.93.
Fisheries, see 19 CFR 4.96.

§ 311. Penalty for touching at foreign port without permission

West's Federal Forms

Forfeitures in admiralty, see § 11105 et seq.

§ 313. Foreign vessels bound coastwise

Transfer of Functions. All offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise in the Bureau of Customs of the Department of the Treasury to which appointments were required to be made by the President with the advice and consent of the Senate were ordered abolished, with such offices to be terminated not later than December 31, 1966, by Reorg. Plan No. 1 of 1965,

eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set out in the Appendix to Title 5, Government Organization and Employees. All functions of the offices eliminated were already vested in the Secretary of the Treasury by Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5.

Code of Federal Regulations

Coastwise procedure, see 19 CFR 4.80 to 4.93.

§ 314. Delivery of manifest of foreign vessel

Transfer of Functions. All offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise in the Bureau of Customs of the Department of the Treasury to which appointments were required to be made by the President with the advice and consent of the Senate were ordered abolished, with such offices to be terminated not later than De-

ember 31, 1966, by Reorg. Plan No. 1 of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set out in the Appendix to Title 5, Government Organization and Employees. All functions of the offices eliminated were already vested in the Secretary of the Treasury by Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5.

§ 316. Use of foreign vessels in United States ports

(a) Towing vessels

It shall be unlawful for any vessel not wholly owned by a person who is a citizen of the United States within the meaning of the laws respecting the documentation of vessels and not having in force a certificate of documentation issued under section 12106 or 12107 of Title 46 to tow any vessel other than a vessel in distress, from any port or place in the United States, its Territories or possessions, embraced within the coastwise laws of the United States, to any other port or place within the same, either directly or by way of a foreign port or place, or to do any part of such towing, or to tow any such vessel, from point to point within the harbors of such places. The owner and master of any vessel towing another vessel in violation of the provisions of this section shall each be liable to a fine of not less than \$250 nor more than \$1,000, which fines shall constitute liens upon the offending vessel enforceable through the district court of the United States for any district in which such vessel may be found, and clearance shall not be granted to such vessel until the fines have been paid. The towing vessel shall also be further liable to a penalty of \$50 per ton on the measurement of every vessel towed in violation of this section, which sum may be recovered by way of libel or suit.

[See main volume for text of (b) to (e)]

(As amended May 19, 1986, Pub.L. 99-307, § 10, 100 Stat. 447.)

1986 Amendment. Subsec. (a). Pub.L. 99-307 substituted "a certificate of documentation issued under section 12106 or 12107 of Title 46" for "a certificate of registry, a certificate of enrollment, or a license, issued pursuant to this title, or a certificate of award of number issued pursuant to section 288 of this title," and "a vessel in distress" for "a vessel of foreign registry, or a vessel in distress".

Cross References

Definition of enrollment, license, or register with respect to vessel documentation, see section 65w of this title.

Legislative History. For legislative history and purpose of Pub.L. 99-307, see 1986 U.S.Code Cong. and Adm.News, p. 1308.

West's Federal Forms

Fine, see § 7535.

Code of Federal Regulations

Towing, see 19 CFR 4.92.

§ 318. Repealed. Pub.L. 96-594, Title I, § 127, Dec. 24, 1980, 94 Stat. 3459

Section, R.S. § 4372, related to exemptions where vessel license expires at sea.

Effective Date of Repeal; Savings Provisions.

Section repealed effective on the first day of the eighteenth month following the month Title I of

Pub.L. 96-594 was enacted, December 1980, except with respect to rights and duties that matured, penalties that were incurred, and proceedings that were begun before such effective date, see sections 127 and 128 of Pub.L. 96-594, set out as notes under section 65 of this title.

§ 319. Civil penalties for trading without required certificate of documentation

Whenever a vessel, entitled to be documented and not so documented, is employed in a trade for which certificates of documentation are issued under the vessel documentation laws, other than a trade covered by a registry, the vessel is liable to a civil penalty of \$500 for each port at which it arrives without the proper certificate of documentation, and if it has on board any merchandise of foreign growth or manufacture (sea stores excepted), or any taxable domestic spirits, wines, or other alcoholic liquors, on which the duties or taxes have not been paid or secured to be paid, the vessel, together with its equipment and cargo, is liable to seizure and forfeiture. Marks, labels, brands, or stamps, indicative of foreign origin, upon or accompanying merchandise or containers of merchandise found on board such vessel, shall be prima facie evidence of the foreign origin of such merchandise.

(As amended Dec. 24, 1980, Pub.L. 96-594, Title I, § 126(e), 94 Stat. 3459.)

of fees for prescribed services. Subject matter is now covered by section 58a of Title 19, Customs Duties.

334, 335. Repealed. Pub.L. 96-594, Title I, § 127, Dec. 24, 1980, 94 Stat. 3459

Sections, R.S. §§ 4384, 4385, related to vessels liable for fees for enrollment, and applicability of enumerated provisions to lighters and boats, respectively.

Effective Date of Repeal; Savings Provisions. Sections repealed effective on the first day of the

eighteenth month following the month Title I of Pub.L. 96-594 was enacted, December 1980, except with respect to rights and duties that matured, penalties that were incurred, and proceedings that were begun before such effective date, see sections 127 and 128 of Pub.L. 96-594, set out as notes under section 65 of this title.

§ 336. Canal boats exempt from enrollment, license, and customs fees

The act to which this is a supplement shall not be so construed as to extend the provisions of the said act to canal boats or boats employed on the internal waters or canals of any State; and all such boats, excepting only such as are provided with sails or propelling machinery of their own adapted to lake or coastwise navigation, and excepting such as are employed in trade with the Canadas, shall be exempt from the provisions of the said act, and from the payment of all customs and other fees under any act of Congress.

(Apr. 18, 1874, c. 110, 18 Stat. 31.)

References in Text. "The act to which this is a supplement", and "the said act", referred to in text, mean Act Feb. 18, 1873, c. 8, 1 Stat. 305, entitled "An Act for enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries, and for regulating the same", which was incorporated into the Revised Statutes of 1878 as R.S. §§ 919, 923, 938, 941, 4311, 4312,

4319 to 4327, 4331 to 4338, 4349 to 4356, 4359 to 4369, 4371 to 4381, 4383, and 4385, and thence into the Code principally as sections 251, 252, 259, 269 to 269, 273 to 279, 307 to 315, 318, 321 to 329, 333, and 335 of this title. For complete classification of such Revised Statutes sections to the Code, see Tables volume.

CHAPTER 14—INSPECTION OF STEAM VESSELS

VESSELS SUBJECT TO INSPECTION AND REGULATION

Sec.

361 to 367. Repealed.

PLANS AND SPECIFICATIONS FOR CONSTRUCTION OR ALTERATION OF PASSENGER VESSELS

369. Repealed.

APPOINTMENT, QUALIFICATIONS, DUTIES, AND SALARIES OF INSPECTORS AND OTHER OFFICERS

372 to 382b. Repealed.

382b-1. Reimbursements for inspection or examination of documented vessels at foreign ports or places credited to appropriation for operating expenses of Coast Guard.

382c to 385. Repealed.

SMALL PASSENGER-CARRYING VESSELS

390 to 390g. Repealed.

MODE, MANNER, AND EXTENT OF INSPECTION; CERTIFICATES; RECORDS

391 to 419. Repealed.

420. Repealed.

Sec.

PROCEDURE; DECISIONS AND REVIEW THEREOF

431 to 440. Repealed.

OCEANOGRAPHIC RESEARCH VESSELS

441. Exemption of oceanographic research vessels from inspection laws; definitions.

442. Repealed.

443. Vessel not engaged in trade or commerce.

444. Scientific personnel not considered seamen.

445. Repealed.

SAILING SCHOOL VESSELS

446. Sailing school students and sailing school instructors without seaman status under steam-vessel and merchant seamen provisions or maritime law doctrines.

446a. Financial responsibility; minimum amount; evidence.

446b. Sailing school vessel without status of merchant vessel or vessel engaged in trade or commerce under sections 291 and 883 of this title.

446c. Definitions.

446d. Repealed.

VESSELS SUBJECT TO INSPECTION AND REGULATION

361 to 367. Repealed. Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 600-605

Section 361, R.S. § 4399, Acts June 13, 1933, c. 61, 48 Stat. 125; Oct. 6, 1980, Pub.L. 96-378, § 8, 94 Stat. 1518, defined steam vessels.

Section 362, R.S. § 4400, Acts Aug. 7, 1882, c. 441, § 1, 22 Stat. 346; Mar. 1, 1895, c. 146, § 1, 28 Stat. 699; Feb. 15, 1902, c. 23, 32 Stat. 34; Mar. 17, 1906, c. 955, § 1, 34 Stat. 68; Mar. 4, 1913, c. 141, § 1, 37 Stat. 736; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097; Nov. 6, 1966, Pub.L. 89-777, § 1, 80 Stat. 1356; Dec. 24, 1969, Pub.L. 91-154, 83 Stat. 427, related to domestic and foreign vessels.

Section 363, Acts Oct. 25, 1919, c. 82, 41 Stat. 305; Ex.Ord.No. 6166, §§ 12, 19, June 10, 1933; June 29, 1936, c. 858, Title IX, § 904, 49 Stat. 2016; 1950 Reorg. Plan No. 21, §§ 305, 306, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1277; Aug. 6, 1981, Pub.L. 97-31, § 12(23), 95 Stat. 155, related to Department of Commerce and Maritime Administration vessels.

Section 364, R.S. § 4401; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, related to vessels navigating coastwise and on the Great Lakes.

Section 365, Act June 25, 1890, c. 616, 26 Stat. 180, related to vessels navigating the Irondequoit Bay.

Section 366, Acts Mar. 3, 1897, c. 389, § 14, 29 Stat. 690; Feb. 14, 1903, c. 552, § 10, 32 Stat. 829; Mar. 4, 1913, c. 141, § 1, 37 Stat. 736; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946,

11 F.R. 7875, 60 Stat. 1097, related to foreign vessels admitted to registry.

Section 367, Acts June 20, 1936, c. 628, §§ 1, 2, 49 Stat. 1544, 1545; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097; July 11, 1968, Pub.L. 90-397, § 3, 82 Stat. 341; July 9, 1973, Pub.L. 93-65, § 6(a), 87 Stat. 151; Oct. 1, 1974, Pub.L. 93-430, § 6(2), 88 Stat. 1182; July 1, 1977, Pub.L. 95-61, § 7(b), 91 Stat. 260; Oct. 26, 1981, Pub.L. 97-68, § 2(a)(1), 95 Stat. 1040, related to seagoing vessels propelled by internal-combustion engines and to exemptions.

Former provisions are covered by Revised Title 46 as follows:

Former Provisions	Present Provisions
361	2101(16), (37)
362(a) first par.	2109, 3301(9). See 3303(9)
362(a) second par.	3303
362(a) third par.	3314(c)
362(b), (c)	3504, 3505
363	2109
364	8502(a). See 3301(9), 12105(c)
365	Repealed. See 3301(9), 3318
366	3306. See 3305(a), 3309, 12102
367	2101(3), (16), (33), 3301(7), 3302(b), (c), 7101(c)(1), 7106

PLANS AND SPECIFICATIONS FOR CONSTRUCTION OR ALTERATION
OF PASSENGER VESSELS

§ 369. Repealed. Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 603-605

Section, Acts May 27, 1936, c. 463, § 5, 49 Stat. 1384; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097; Nov. 6, 1966, Pub.L. 89-777, § 4, 80 Stat. 1358; July 27, 1968, Pub.L. 90-435, § 1(1), 82 Stat. 449; Dec. 31, 1970, Pub.L. 91-612, § 3, 84 Stat. 1835; Aug. 16, 1973, Pub.L. 93-106, § 2, 87 Stat. 350; Oct. 17, 1976, Pub.L. 94-535, § 2, 90 Stat. 2496; Dec. 24, 1980, Pub.L. 96-594, Title III, § 301, 94 Stat. 3462, related to examination and approval of plans and specifications for construction or alteration of passenger vessels by the Commandant of the Coast Guard.

Section 1 of Pub.L. 93-106, Aug. 16, 1973, 87 Stat. 350, and section 1 of Pub.L. 94-535, Oct. 17, 1976, 90 Stat. 2496, which had provided, respectively, for the extension of existing exemptions of the overnight river boat Delta Queen from the safety-at-sea laws, and which were set out as notes

under former section 369 of this title, were repealed by Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 605.

Former section 369 provisions are covered by Revised Title 46 as follows:

Former Provisions	Present Provisions
(a)	Repealed. See 3306(a)
(b)	3503. See 3306(a), (b), 3316
(c)	Repealed. See 2107(b), 3306(a)(1), 3313(b)(1), 3318(a)
(d)	3503. See 3306(a)(1)
(e)	3318(e)
(f)	Repealed

repealed

**APPOINTMENT, QUALIFICATIONS, DUTIES, AND SALARIES OF
INSPECTORS AND OTHER OFFICERS**

§ 372. Repealed. Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 600

Section R.S. § 4403, Acts Feb. 14, 1903, c. 552, § 10, 32 Stat. 829; Mar. 4, 1913, c. 141, § 1, 37 Stat. 736; June 30, 1932, c. 314, §§ 501, 502(b), 47 Stat. 415; May 27, 1936, c. 463, § 1, 49 Stat.

1380; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, related to the administration of the inspection laws. See section 2103 of this title.

§ 373. Repealed. Pub.L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 632, 643, 649

Section, R.S. § 4404; Acts July 2, 1918, c. 115, 40 Stat. 740; May 27, 1936, c. 463, § 2, 49 Stat. 1381, provided for the appointment and compensation of supervising inspectors.

Act May 27, 1936, c. 463, § 2, 49 Stat. 1381, was also repealed by Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 603.

§ 374. Repealed. Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 602, 603

Section, Acts Mar. 4, 1911, c. 237, § 1, 36 Stat. 1229; Mar. 4, 1913, c. 141, § 1, 37 Stat. 736; June 30, 1932, c. 314, § 501, 47 Stat. 415; May

27, 1936, c. 463, § 2, 49 Stat. 1381, related to performance of duties during the absence of supervising inspectors.

§ 374a. Repealed. Pub.L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 649

Section Act May 27, 1936, c. 463, § 3, 49 Stat. 1381, provided for principal traveling inspectors in the field service of the Bureau of Marine Inspection and Navigation.

Section was also repealed by Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 603.

§§ 375 to 380. Repealed. Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 600-602

Section 375, R.S. § 4405, Acts Mar. 3, 1905, c. 1453, § 1, 33 Stat. 1022; Feb. 8, 1907, c. 892, 34 Stat. 881; Mar. 4, 1913, c. 141, § 1, 37 Stat. 736; June 30, 1932, c. 314, §§ 501, 502(b), 47 Stat. 415; May 27, 1936, c. 463, § 1, 49 Stat. 1380; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, related to regulations of the Commandant. See section 3306(a) of this title.

Section 376, R.S. § 4406, required supervising inspectors to watch over their territory and to visit the local boards of inspectors and licensed vessels.

Section 377, R.S. § 4407; Acts Feb. 14, 1903, c. 552, § 10, 32 Stat. 829; Mar. 4, 1913, c. 141, § 1, 37 Stat. 736, provided for reports by supervising inspectors of any violations of specified

provisions of law and of failures in performance of duty by boards of local inspectors.

Section 378, R.S. § 4408, required supervising inspectors to see that boards of local inspectors executed their duties faithfully, promptly and uniformly.

Section 379, R.S. § 4409; Act Feb. 27, 1877, c. 69, § 1, 19 Stat. 251, required supervising inspectors to visit districts not having boards of local inspectors and perform the duties of such boards there and in other districts where boards were not available.

Section 380, R.S. § 4411, provided that the board of supervising inspectors should establish regulations to make known to local inspectors the names of persons whose licenses had been granted and the names of vessels failing to make repairs and vessels refused inspection certificates.

§ 381. Repealed. Pub.L. 85-350, § 3, Mar. 28, 1958, 72 Stat. 49

Section, R.S. §§ 4412, 4413; Act June 7, 1897, ch. 4, § 5, 30 Stat. 103, related to regulations as

to passing steamers and is now covered by section 244 of Title 33, Navigation and Navigable Waters.

§ 382. Repealed. Pub.L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 632, 637-648, 645, 648, 649

Section, R.S. § 4414; Acts Jan. 3, 1887, c. 12, 24 Stat. 354; July 26, 1980, c. 721, 26 Stat. 292;

Mar. 1, 1895, c. 146, § 2, 28 Stat. 699; Mar. 2, 1895, c. 186, 28 Stat. 843; Feb. 15, 1897, c. 231,

29 Stat. 530; Apr. 21, 1898, c. 184, 30 Stat. 360; June 2, 1900, c. 614, 31 Stat. 262; Mar. 3, 1905, c. 1455, 33 Stat. 1026; Apr. 9, 1906, c. 1372, § 1, 34 Stat. 106; May 28, 1908, c. 212, § 9, 35 Stat. 428; Mar. 4, 1913, c. 159, 37 Stat. 1013; Oct. 22, 1913, c. 32, 38 Stat. 223; Feb. 26, 1917, c. 125, 39 Stat. 942; July 2, 1918, c. 115, 40 Stat. 740; Apr. 19, 1924, c. 129, §§ 1, 2, 43 Stat. 104; May 17, 1932, c. 190, 47 Stat. 158; June 30, 1932, c. 314, § 501, 47 Stat. 415; May 27, 1936, c. 463, § 1, 49 Stat. 1380 provided for local inspectors of hulls and inspectors of boilers in enumerated collection districts and posts, for assistant inspectors, traveling inspectors and clerks, and for their salaries and traveling expenses.

Acts Jan. 3, 1887, c. 12, 24 Stat. 354; July 26, 1890, c. 721, 26 Stat. 292; Mar. 2, 1895, c. 186, 28 Stat. 843; Apr. 21, 1898, c. 184, 30 Stat. 360; Oct. 22, 1913, c. 32, § 1, 38 Stat. 223; Feb. 26, 1917, c. 125, 39 Stat. 942, were also repealed by Pub.L. 90-83, § 10(b), Sept. 11, 1967, 81 Stat. 223.

Acts Mar. 2, 1895, c. 186, 28 Stat. 843; June 30, 1932, c. 314, § 501, 47 Stat. 415; and May 27, 1936, c. 463, § 1, 49 Stat. 1380, were also repealed by Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 601, 603.

§§ 382a, 382a-1. Repealed. Pub.L. 90-83, § 10(b), Sept. 11, 1967, 81 Stat. 223

Section 382a, Acts May 22, 1928, c. 684, 45 Stat. 710; June 30, 1932, c. 314, §§ 501, 502, 47 Stat. 415; May 27, 1936, c. 463, § 1, 49 Stat. 1380, provided for a board of local inspectors at Hoquiam, Washington.

Section 382a-1, Act Apr. 5, 1938, c. 73, 52 Stat. 200, provided for a board of local inspectors at Port Arthur, Texas.

§ 382b. Repealed. Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 603

Section, Acts May 27, 1936, c. 463, § 6, 49 Stat. 1385; May 11, 1938, c. 194, 52 Stat. 345; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097; Aug. 6, 1981, Pub.L. 97-31, § 12(24), 95 Stat. 155, related to

extra pay for overtime services, payment by the owner, master or agent, appropriations, and regulation of varying working hours. See sections 2104, 2111 and 2112 of this title.

§ 382b-1. Reimbursements for inspection or examination of documented vessels at foreign ports or places credited to appropriation for operating expenses of Coast Guard

When an inspection or examination of a vessel documented or to be documented as a vessel of the United States is conducted at a foreign port or place at the request of the owner or operator of the vessel, that owner or operator shall reimburse the Secretary of the department in which the Coast Guard is operating for the travel and subsistence expenses incurred by the personnel assigned to perform the inspection or examination. Amounts received as reimbursement for these expenses shall be credited to the appropriation for operating expenses of the Coast Guard.

(Pub.L. 96-376, § 8, Oct. 3, 1980, 94 Stat. 1510.)

Legislative History. For legislative history and purpose of Pub.L. 96-376, see 1980 U.S. Code Cong. and Adm. News, p. 3284.

§ 382c. Repealed. Pub.L. 89-554, § 8(a), Sept. 8, 1966, 80 Stat. 650

Section, Act Apr. 30, 1940, c. 160, 54 Stat. 169, authorized the Secretary of Commerce to rearrange the location of boards of local inspectors.

§ 383. Repealed. Pub.L. 90-83, § 10(b), Sept. 11, 1967, 81 Stat. 223

Section, Acts Oct. 22, 1913, c. 32, 38 Stat. 223; June 30, 1932, c. 314, § 504, 47 Stat. 415; May 7, 1936, c. 463, § 1, 49 Stat. 1380, related to travel-

ing expenses of inspectors and other employees in the Bureau of Marine Inspection and Navigation.

Repealed

Section 395, Act May 28, 1908, c. 212, § 10, 35 Stat. 428; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097; June 4, 1956, c. 350, § 3, 70 Stat. 225; June 30, 1978, Pub.L. 95-308, § 7, 92 Stat. 359; Aug. 8, 1980, Pub.L. 96-324, § 2, 94 Stat. 1020; Oct. 26, 1981, Pub.L. 97-68, § 2(a)(2), 95 Stat. 1040, related to seagoing barges, hulls and equipment.

Former section 395 provisions are covered by Revised Title 46 as follows:

Former Provisions	Present Provisions
(a)	3305(a)(1), (3), (4), 3307(1)
(b)	3301(4), (6), 3305(a), 3307(3)
(c)	3302(c)(2), 3311
(d)	3309(a)
(e)	2101(3), (32)

§ 396. Repealed. Pub.L. 86-244, § 3(a)(9), Sept. 9, 1959, 73 Stat. 476

Section, Act May 28, 1908, c. 212, § 11, 35 Stat. 428, required seagoing barges to be equipped with life-saving appliances. See section 3306(a)(1), (4) of this title.

Repeals. Section 3(a)(9) of Pub.L. 86-244, Sept. 9, 1959, 73 Stat. 476, which repealed this section, was repealed by Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 604.

397 to 400. Repealed. Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 600-602, 604

Section 397, Acts May 28, 1908, c. 212, § 12, 35 Stat. 428; Mar. 4, 1915, c. 184, § 6, 38 Stat. 1218, required certificates of inspection and equipment of barges.

Section 398, Act May 28, 1908, c. 212, § 13, 35 Stat. 428, related to navigating barges without certificates.

Section 399, R.S. § 4421, Acts Feb. 27, 1877, c. 69, § 1, 19 Stat. 251; June 11, 1906, c. 3071, 34 Stat. 230; June 25, 1910, c. 402, 36 Stat. 831; Mar. 4, 1915, c. 184, § 1, 38 Stat. 1216; Proc.No. 2695, July 4, 1946, 11 F.R. 7517, 60 Stat. 1352; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097; June 8, 1955, c. 133, 69 Stat. 86, related to certificates, temporary certificates, and completion of voyages, after expiration.

Section 400, R.S. § 4423, Acts Mar. 3, 1905, c. 1457, § 3, 33 Stat. 1029; Mar. 4, 1915, c. 184, § 3, 38 Stat. 1217; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, related to the placing of certificates for observation by passengers.

Former provisions are covered by Revised Title 46 as follows:

Former Provisions	Present Provisions
397	Repealed
398	3318(a)
399	3309, 3311, 3314(a), (b)
400	3312

§ 401. Repealed. Oct. 9, 1940, c. 777, § 7, 54 Stat. 1028

Section, R.S. § 4422, Act Mar. 4, 1915, ch. 184, § 2, 38 Stat. 1217, related to the grant and posting of a certificate to carry gunpowder. Section 2 of Act Mar. 4, 1915, was also repealed by Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 602. See sections 201(22), (45), 2106, 2107, and 3306(a)(5) of this title.

Repeals. Section 7 of Act Oct. 9, 1940, c. 777, 54 Stat. 1028, which repealed this section, was repealed by Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 604.

402 to 419. Repealed. Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 600-605

Section 402, R.S. § 4424, Acts Mar. 4, 1915, c. 184, § 4, 38 Stat. 1217; Oct. 9, 1940, c. 777, § 4, 54 Stat. 1028, related to penalties for receiving passengers in the absence of unexpired certificates of approval.

Section 403, R.S. § 4425, related to punishments for certifying falsely.

Section 404, R.S. § 4426, Acts Dec. 22, 1890, c. 26, 26 Stat. 692; May 16, 1906, c. 2460, 34 Stat. 193; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097; Aug. 31, 1954, c. 1171, 68 Stat. 1047; May 10, 1956, c. 258, § 6(a), (b), 70 Stat. 153; as amended Aug. 23, 1958, Pub.L. 85-739, § 1, 72 Stat. 833; July 11, 1968, Pub.L. 90-397, § 1, 82 Stat. 341; July

9, 1973, Pub.L. 93-65, § 6(b), 87 Stat. 151; Oct. 1, 1974, Pub.L. 93-430, § 6(4), 88 Stat. 1183; July 1, 1977, Pub.L. 95-61, § 7(a), 91 Stat. 260; Oct. 6, 1980, Pub.L. 96-378, § 1(a), 94 Stat. 1513; Oct. 26, 1981, Pub.L. 97-68, § 2(a)(3), 95 Stat. 1040, related to inspection and manning of small vessels, regulations, and exemptions.

Section 404-1, R.S. § 4426a, as added Pub.L. 96-378, § 1(b), Oct. 6, 1980, 94 Stat. 1513, related to offshore supply vessels.

Section 404a, Pub.L. 87-177, Aug. 30, 1961, 75 Stat. 410, related to fishing vessels, and transfer and transportation of catch of vessels.

Section 405, R.S. § 4427; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875,

60 Stat. 1097; July 7, 1972, Pub.L. 92-339, § 1, 86 Stat. 423, related to tugboats, freight boats, and towing vessels, and licensing of personnel.

Section 406, R.S. § 4428, Act June 13, 1933, c. 61, 48 Stat. 126, related to construction of boilers and unfired pressure vessels.

Section 407, R.S. § 4429, Acts Aug. 7, 1882, c. 433, § 1, 22 Stat. 310; Feb. 14, 1903, c. 552, § 10, 32 Stat. 829; Mar. 4, 1913, c. 141, § 1, 37 Stat. 736; June 13, 1933, c. 61, 48 Stat. 126; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, related to punishment for improper construction.

Section 408, R.S. § 4430, Acts Jan. 22, 1894, c. 16, 28 Stat. 28; Feb. 14, 1903, c. 552, § 10, 32 Stat. 829; Mar. 4, 1913, c. 141, § 1, 37 Stat. 736; June 13, 1933, c. 61, 48 Stat. 126; May 27, 1936, c. 463, § 1, 49 Stat. 1380; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, related to boiler plates.

Section 409, R.S. § 4431, Act June 13, 1933, c. 61, 48 Stat. 127; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, related to stamping boiler plates.

Section 410, R.S. § 4432, Act June 13, 1933, c. 61, 48 Stat. 127, related to counterfeiting stamps.

Section 411, R.S. § 4433, Act June 13, 1933, c. 61, 48 Stat. 127; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097; Aug. 10, 1974, Pub.L. 93-370, 88 Stat. 423, related to boilers and pressure vessels and safety standards.

Section 412, R.S. § 4434, Acts Feb. 11, 1885, c. 55, 23 Stat. 298; Feb. 28, 1895, c. 139, § 1, 28 Stat. 690; Mar. 2, 1909, c. 244, §§ 1, 2, 35 Stat. 687; June 13, 1933, c. 61, 48 Stat. 127; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, related to thickness of boiler plate.

Section 413, R.S. § 4437; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, related to obstructing safety valves.

Section 414, R.S. § 4457, Act Oct. 9, 1940, c. 777, § 5, 54 Stat. 1028; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, related to records and reports of inspections and licenses.

Section 415, R.S. § 4460, Acts Feb. 14, 1903, c. 552, § 10, 32 Stat. 829; Mar. 4, 1913, c. 141, § 1, 37 Stat. 736, related to procurement of instruments and other office supplies for supervising inspectors and local boards of inspectors.

Section 416, R.S. § 4462, Acts Feb. 14, 1903, c. 552, § 10, 32 Stat. 829; Mar. 4, 1913, c. 141, § 1, 37 Stat. 736; May 27, 1936, c. 463, § 7, 49 Stat. 1386; 1946 Reorg. Plan No. 3, §§ 101-104, eff.

July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, related to regulations of the Commandant of the Coast Guard.

Section 417, Act May 27, 1936, c. 463, § 7, 49 Stat. 1386, related to rules and regulations. See section 3306 of this title.

Section 418, Act May 27, 1936, c. 463, § 8, 49 Stat. 1386, authorized appropriations to carry out the provisions of Act May 27, 1936.

Section 419, Act May 27, 1936, c. 463, § 9, 49 Stat. 1386, repealed all laws or parts of laws inconsistent with the terms of Act May 27, 1936.

Former provisions are covered by Revised Title 46 as follows:

Former Provisions	Present Provisions
402.....	Repealed. See 3318(a)
403.....	Repealed. See Title 18 § 1018
404.....	2101(13), (16), (17), 2106, 3301(1), (4), (5), (9), 3302(c), (d)(1), 3306(a), (b), 3318, 8105, 8301(a)(5)
404-1(1)(i)-(iv).....	2101(19)
401-1(2), (3).....	3302(g)(1)(A), (B)
404-1(4).....	2101(21)(C)
404-1(5).....	2101(13)
404-1(6) first sent. (i), (ii).....	3307(2), (3)
404-1(6) second sent.	3306(f)
404-1(7).....	3301(3), 3302(g), (h), 3307
404-1(8).....	8301(b)
404-1(9).....	3302(h)
404-1(10).....	3501(e)
404a.....	Repealed. See 2101(13), 12108
405(a).....	3301(1), (9), 3305(a), 3306(a), 7101
405(b)(1)(A), (B).....	2101(34), (40)
405(b)(1)(C).....	1804
405(b)(1)(D).....	2101(43)
405(b)(2).....	8104(h), 8904
405(b)(3).....	8905(b)
406.....	3305
407.....	3305, 3306, 3318(b)
408.....	3305, 3306, 3318(f)
409.....	Repealed. See 3306, 3310
410.....	3318(f)(1), (2), (4)
411, 412.....	3306(a)
413.....	3318(c), (d)
414.....	3310, 7502
416.....	2104, 3306

§ 420. Repealed. Pub.L. 99-509, Title V, § 5104(b), Oct. 21, 1986, 100 Stat. 1928

Section, Pub.L. 94-406, § 8, Sept. 10, 1976, 90 Stat. 1236; Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 605, authorized issuance of permits ex-

empting specific cargo-carrying vessels in Alaska from inspection, etc., requirements.

PROCEDURE; DECISIONS AND REVIEW THEREOF

431 to 440. Repealed. Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 600-602, 604

Section 431, Acts June 10, 1918, c. 95, § 1, 40 Stat. 602; June 30, 1932, c. 314, §§ 501, 502(b), 47 Stat. 415; May 27, 1936, c. 463, § 1, 49 Stat. 1380, provided for appeals from any decision or action of a board of local inspectors to the supervising inspector and from him to the Director of the Bureau of Marine Inspection and Navigation.

Section 432, Acts June 10, 1918, c. 95, § 2, 40 Stat. 603; June 30, 1932, c. 314, §§ 501, 502(b), 47 Stat. 415; May 27, 1936, c. 463, § 1, 49 Stat. 1380, provided for decision of disagreements between local inspectors by the supervising inspector and review of decisions and actions of the board of local inspectors by the supervising inspector and by the Director of the Bureau of Marine Inspection and Navigation.

Section 433, Acts June 10, 1918, c. 95, § 3, 40 Stat. 603; June 30, 1932, c. 314, §§ 501, 502(b), 47 Stat. 415; May 27, 1936, c. 463, § 1, 49 Stat. 1380, related to powers of the Director of the Bureau of Marine Inspection and Navigation and supervising inspectors in reviewing actions and decisions.

Section 434, Act June 10, 1918, c. 95, § 4, 40 Stat. 603, related to regulations for enforcement of former sections 431-433 of this title.

Section 435, R.S. § 4453, Acts Mar. 3, 1905, c. 1454, § 2, 33 Stat. 1023; Mar. 4, 1913, c. 141, § 1, 37 Stat. 736; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60

Stat. 1097; June 4, 1956, c. 350, § 4, 70 Stat. 225, related to inspections and notice for repairs and enforcement of requirements. See sections 2101(34), 3308, and 3313 of this title.

Section 436, R.S. § 4454; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097; Act June 4, 1956, c. 350, § 5, 70 Stat. 226, related to penalties for failure to make repairs on notice, see sections 2106 and 3318(a, h) of this title.

Section 437, R.S. § 4455, related to the modification of actions of inspectors of one district by the inspectors of another district.

Section 438, R.S. § 4456, related to inspections by local boards of inspectors in other districts not having boards.

Section 439, R.S. § 4410; Acts May 22, 1912, c. 130, § 1, 37 Stat. 116; June 30, 1932, c. 314, §§ 501, 502(b), 47 Stat. 415; May 27, 1936, c. 463, § 1, 49 Stat. 1380, related to reports by supervising inspectors and examination of actions of such inspectors and the local boards.

Section 440, R.S. § 4451; Acts June 19, 1886, c. 421, § 1, 24 Stat. 79; Apr. 4, 1888, c. 61, § 2, 25 Stat. 80; May 28, 1896, c. 252, § 6, 29 Stat. 179; Mar. 4, 1913, c. 142, § 1, 37 Stat. 785, related to payment of witness fees under section 239 of this title. See section 6304(c) of this title.

OCEANOGRAPHIC RESEARCH VESSELS

§ 441. Exemption of oceanographic research vessels from inspection laws; definitions

As used in sections 441-445 of this title—

(1) the term "oceanographic research vessel" means a vessel which the Secretary of the department in which the Coast Guard is operating finds is being employed exclusively in instruction in oceanography or limnology, or both, or exclusively in oceanographic research, including, but not limited to, such studies pertaining to the sea as seismic, gravity meter and magnetic exploration and other marine geophysical or geological surveys, atmospheric research, and biological research;

(2) the term "scientific personnel" means persons who are aboard a vessel solely for the purpose of engaging in scientific research, instructing, or receiving instruction, in oceanography or limnology.

(Pub.L. 89-99, § 1, July 30, 1965, 79 Stat. 424.)

Transfer of Functions. The Coast Guard was transferred to the Department of Transportation, and all functions, powers, and duties relating to the Coast Guard of the Secretary of the Treasury and of other officers and offices of the Department of the Treasury were transferred to the Secretary of Transportation by Pub.L. 89-670, § 6(b)(1), Oct. 15, 1966, 80 Stat. 938. Section 6(b)(2) of Pub.L. 89-670, however, provided that notwithstanding such transfer of functions, the Coast Guard shall operate as part of the Navy in time of war or when the President directs as

provided in section 3 of Title 14, Coast Guard. See section 1655(b) of Title 49, Transportation.

Legislative History: For legislative history and purpose of Pub.L. 89-99, see 1965 U.S. Code Cong. and Adm. News, p. 2383.

Notes of Decisions

Agency interpretation 1a
Crafts within section 2
Purpose 1

1. Purpose

Purpose of sections 441-445 of this title is to classify scientific personnel aboard oceanographic research vessels as nonpassengers to remove such vessels from some of existing statutory regulations pertaining to passenger vessels; to classify scientific personnel, but scientific personnel only, aboard such vessels as nonseamen so as to relieve such vessels of obligation of complying with certain statutory regulations pertaining to seamen; and to give Secretary of Transportation authority to exempt vessel from existing statutes and adopt new regulations more appropriate to such vessels. *Sennett v. Shell Oil Co.*, D.C.La.1971, 325 F.Supp. 1.

1a. Agency interpretation

Interpretation of manning statutes, sections 672 and 673 of this title, and of this chapter by the Coast Guard is entitled to deference in matters of statutory construction. *U. S. v. Blue Water Ma-*

rine Industries, Inc., C.A.Alaska 1981, 661 F.2d 793.

2. Crafts within section

Lessee of fleet of boats, which performed surveys and soundings along inland waterways and rivers, could not assert that boats qualified as "ocean research vessels," so that "scientific personnel" who worked thereon were not on that basis precluded from bringing Jones Act claim, where lessee failed to obtain "ocean research vessel" designation for boats from Coast Guard. *Smith v. Odom Offshore Surveys, Inc.*, C.A.5 (La.) 1986, 791 F.2d 411.

Vessel which was privately owned and engaged in effort to find oil and gas was, while engaged solely in oceanographic research, subject to provisions of sections 441-445 of this title. *Sennett v. Shell Oil Co.*, D.C.La.1971, 325 F.Supp. 1.

§ 442. Repealed. Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 604

Section, Pub.L. 89-99, § 2, July 30, 1965, 79 Stat. 424, directed that oceanographic research

vessels not be considered passenger vessels. See section 3302(f) of this title.

§ 443. Vessel not engaged in trade or commerce

An oceanographic research vessel shall not be deemed to be engaged in trade or commerce.

(Pub.L. 89-99, § 3, July 30, 1965, 79 Stat. 424.)

§ 444. Scientific personnel not considered seamen

Scientific personnel on an oceanographic research vessel shall not be considered seamen under the provisions of title 53 of the Revised Statutes and Act amendatory thereof or supplementary thereto.

(Pub.L. 89-99, § 4, July 30, 1965, 79 Stat. 424.)

References in Text. Title 53 of the Revised Statutes, referred to in text, was comprised of sections 4501 to 4612 of the Revised Statutes and is now contained in sections 542a, 543, 545, 546, 561, 562, 564 to 571, 574 to 578, 591 to 597, 600, 660, 661 to 669, 674 to 679, 682 to 685, 701 to 703, 705 to 707, 709, 710 and 711 to 713 of this title. Sections 4602 and 4606 of the Revised Statutes, which were formerly classified to sections 704 and 708 of this title were repealed. See notes under such former sections 704 and 708.

Notes of Decisions**Construction with other laws**

Generally ½

Maritime common law ¾

Duties and liabilities 1**Right of action 2****½. Construction with other laws—Generally**

This section prevents scientific personnel from being considered seamen under provisions of Jones Act, section 688 of this title. *Presley v. Vessel Caribbean Seal*, C.A.Tex.1983, 709 F.2d 406, certiorari denied 104 S.Ct. 699, 464 U.S. 1038, 79 L.Ed.2d 165.

¾. — Maritime common law

This section did not prevent scientific personnel from being considered seamen under general maritime law. *Presley v. Vessel Caribbean Seal*, C.A.Tex.1983, 709 F.2d 406, certiorari denied 104 S.Ct. 699, 464 U.S. 1038, 79 L.Ed.2d 165.

1. Duties and liabilities

If decedent who was part of "scientific personnel" aboard oceanographic research vessel was a seaman, there could be no recovery for ordinary negligence resulting in his death, but if he was not seaman, then vessel owner owed him duty of reasonable care including due care to provide him with safe place to carry out purpose of his business. *Sennett v. Shell Oil Co.*, D.C.La.1971, 325 F.Supp. 1.

2. Right of action

Scientific personnel on oceanographic research vessel were not seamen and were not entitled to benefit from doctrine of seaworthiness. *Craig v. M/V Peacock on Complaint of Edwards*, C.A.9 (Cal.) 1985, 760 F.2d 953.

Scientific personnel on board oceanographic research vessels, if otherwise entitled to assert seamen status under Jones Act, section 688 of this title, and general maritime law, are not prevented

Note 2

from doing so by this section excluding scientific personnel from consideration as seamen but are entitled to same remedies available to all whose duties contribute to operation and welfare of vessel since scientific personnel were excluded from consideration as seamen under sections 441 to 445 of this title only to avoid operation of regulations that were ill suited to such personnel and unnecessarily hindered them in performance of their technical or scientific functions. *Presley v. Carribean Seal*, D.C.Tex.1982, 537 F.Supp. 956.

Jones Act, section 688 of this title, and Death on the High Seas Act, section 761 et seq. of this title, are "amendatory" of merchant seamen statutes, within terms of sections 441-445 of this title, and widow and children of person who was killed while part of "scientific personnel" aboard oceanographic research vessel had no cause of action under Jones Act, section 688 of this title, or Death on the High Seas Act, section 761 et seq. of this title. *Sennett v. Shell Oil Co.*, D.C.La.1971, 325 F.Supp. 1.

§ 445. Repealed. Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 604

Section, Pub.L. 89-99, § 5, July 30, 1965, 79 Stat. 424, related to exemption by regulation. See sections 2113(2) and 3306(c) of this title.

SAILING SCHOOL VESSELS

§ 446. Sailing school students and sailing school instructors without seamen status under steam-vessel and merchant seamen provisions or maritime law doctrines

Sailing school students and sailing school instructors shall not be considered to be seamen under the provisions of titles 52 and 53 of the Revised Statutes of the United States and any Act amendatory thereof or supplementary thereto, or for the purposes of the maritime law doctrines of maintenance and cure or warranty of seaworthiness.

(Pub.L. 97-322, Title II, § 204, Oct. 15, 1982, 96 Stat. 1589.)

References in Text. For classification in the Code of titles 52 and 53 of the Revised Statutes of the United States (comprising sections 4399 to 4500 and 4501 to 4612 and relating to regulation of steam-vessels and merchant seamen), referred to in text, see Tables volume.

Short Title. Section 201 of Pub.L. 97-322 provided that: "This title [enacting this subchapter and provisions set out as a note under this section and amending sections 390 to 390d and 672 of this title] may be cited as the 'Sailing School Vessels Act of 1982'."

Effective Date. Section 208(b) of Pub.L. 97-322 provided that: "Sections 202, 203, 204,

205, 206, and 207 of this title and the amendments made by such sections [amending sections 390 to 390d, enacting section 672(b)(4), and set out as sections 446 to 446c of this title, respectively] shall take effect eighteen months after the date of enactment of this Act [Oct. 15, 1982] or on the date upon which the rules and regulations referred to in subsection (a) [set out as section 446d of this title] take effect, whichever is earlier."

Legislative History. For legislative history and purpose of Pub.L. 97-322, see 1982 U.S.Code Cong. and Adm.News, p. 3138.

§ 446a. Financial responsibility; minimum amount; evidence

Each owner or charterer of a sailing school vessel shall maintain evidence of his or her financial responsibility to meet any liability incurred for death or injury to sailing school students or sailing school instructors on voyages aboard the vessel, in an amount not less than \$50,000 for each student or instructor. Such financial responsibility may be evidenced by policies of insurance or other adequate financial resources.

(Pub.L. 97-322, Title II, § 205, Oct. 15, 1982, 96 Stat. 1589.)

Effective Date. Section effective eighteen months after Oct. 15, 1982, or on the date upon which the rules and regulations referred to in section 446d of this title take effect, whichever is earlier, see section 208(b) of Pub.L. 97-322, set

out as an Effective Date note under section 446 of this title.

Legislative History. For legislative history and purpose of Pub.L. 97-322, see 1982 U.S.Code Cong. and Adm.News, p. 3138.

§ 446b. Sailing school vessel without status of merchant vessel or vessel engaged in trade or commerce

For the purposes of section 291 of this title,¹ section 11101(a)-(c) of this title, and section 883 of this title, a sailing school vessel shall not be deemed to be a merchant vessel or a vessel engaged in trade or commerce.

(Pub.L. 97-322, Title II, § 206, Oct. 15, 1982, 96 Stat. 1590, amended Pub.L. 98-557, § 34(b), Oct. 30, 1984, 98 Stat. 2876.)

¹ So in original. Comma has been editorially supplied.

1984 Amendment. Pub.L. 98-557 added reference to section 11101(a)-(c) of Title 46.

Effective Date. Section effective eighteen months after Oct. 15, 1982, or on the date upon which the rules and regulations referred to in section 446d of this title take effect, whichever is earlier, see section 208(b) of Pub.L. 97-322, set

out as an Effective Date note under section 446 of this title.

Legislative History. For legislative history and purpose of Pub.L. 97-322, see 1982 U.S. Code Cong. and Adm. News, p. 3138. See, also, Pub.L. 98-557, 1984 U.S. Code Cong. and Adm. News, p. 4831.

§ 446c. Definitions

For purposes of sections 672(b)(4), 446, 446a, 446b, and 446d of this title, the term "sailing school students", "sailing school instructor", and "sailing school vessel" have the meaning given such terms in section 390 of this title.

(Pub.L. 97-322, Title II, § 207, Oct. 15, 1982, 96 Stat. 1590.)

Codification. Section 446d of this title, referred to in text, was in the original section 208(a) of Pub.L. 97-322. Section 208(b) of Pub.L. 97-322 provided for effective date of Title II of Pub.L. 97-322 and is set out as an Effective Date note under section 446 of this title.

Effective Date. Section effective eighteen months after Oct. 15, 1982, or on the date upon which the rules and regulations referred to in section 446d of this title take effect, whichever is

earlier, see section 208(b) of Pub.L. 97-322 set out as an Effective Date note under section 446 of this title.

Legislative History. For legislative history and purpose of Pub.L. 97-322, see 1982 U.S. Code Cong. and Adm. News, p. 3138.

Library References

Commerce § 77.15(1).

C.J.S. Commerce §§ 106(1), 106(2), 123.

§ 446d. Repealed. Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 605

Section, Pub.L. 97-322, Title II, § 208(a), Oct. 15, 1982, 96 Stat. 1590, related to rules and regulations, notice of specialized nature of sailing

school vessels, and manning requirements. See sections 3301(5), 3306(c)(1), (2), and 8101(a) of this title.

CHAPTER 15—TRANSPORTATION OF PASSENGERS AND MERCHANDISE BY STEAM VESSELS

Sec.

451 to 453. Repealed.

454 to 457. Transferred.

458 to 464. Repealed.

465. Transferred.

466 to 466b. Repealed.

Sec.

466c. Export of horses.

(a) Restriction on export of horses.

(b) Granting of waivers.

(c) Penalties.

467 to 490. Repealed.

491. Liability of master and owners for damage to passengers.

492 to 498. Repealed.

Cross References**Rates—**

Carriers to establish, observe, and enforce reasonable rates and regulations, see section 817 of this title.

Discriminatory rates prohibited; supervision by Federal Maritime Board, see section 816 of this title.

Free transportation of Government personnel in American vessels prohibited; exceptions; reduction in Government rate; penalty, see section 817b of this title.

Reductions not to be increased without approval of Federal Maritime Board, see section 818 of this title.

451 to 453. Repealed. Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 602

Section 451, R.S. § 4464, Act Feb. 14, 1917, c. 63, § 1, 39 Stat. 918; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, related to the number of passengers allowable.

Section 452, R.S. § 4465, Act Feb. 14, 1917, c. 63, § 2, 39 Stat. 918, related to a penalty for carrying too many passengers.

Section 453, R.S. § 4466, Act Feb. 14, 1917, c. 63, § 3, 39 Stat. 918; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60

Stat. 1097, related to special permits for excursions.

Former provisions are covered by Revised Titles 46 as follows:

Former Provisions	Present Provisions
451.....	3501(a)
452.....	3501(b)(1), (2), (c)
453.....	2113(1)

§§ 454 to 457. Transferred

Codification. Section 454, Acts Apr. 28, 1908, c. 151, § 1, 35 Stat. 69; Mar. 4, 1913, c. 141, § 1, 37 Stat. 736; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, which related to issuance of regulations as to regattas or marine parades by the Commandant of the Coast Guard, was transferred to section 1233 of Title 33, Navigation and Navigable Waters.

Section 455, Acts Apr. 28, 1908, c. 151, § 2, 35 Stat. 69; Mar. 4, 1913, c. 141, § 1, 37 Stat. 736; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, which related to enforcement of regulations issued under section 454 of this title and the use of public and private vessels in such enforcement, was transferred to section 1234 of Title 33.

Section 456, Acts Apr. 28, 1908, c. 151, § 3, 35 Stat. 69; Mar. 4, 1913, c. 141, § 1, 37 Stat. 736; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, which authorized transfer by the President of the authority of the Commandant of the Coast Guard under sections 454 and 455 to the head of another department, was transferred to section 1235 of Title 33.

Section 457, Acts Apr. 28, 1908, c. 151, § 4, 35 Stat. 69; Mar. 4, 1913, c. 141, § 1, 37 Stat. 736; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, which related to penalties for violations of regulations issued pursuant to sections 454 to 456 of this title, was transferred to section 1236 of Title 33.

458 to 462. Repealed. Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 600-602, 604

Section 458, Acts July 9, 1886, c. 755, § 1, 24 Stat. 129; Feb. 23, 1901, c. 465, 31 Stat. 800; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, related to vessels on the Great Lakes carrying persons not passengers.

Section 459, Acts July 9, 1886, c. 755, § 2, 24 Stat. 129; Feb. 23, 1901, c. 465, 31 Stat. 801, related to life preservers.

Section 460, R.S. § 4467, Acts Feb. 27, 1877, c. 69, § 1, 19 Stat. 252; May 28, 1908, c. 212, § 3, 35 Stat. 425; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, related to counts or lists of passengers.

Section 460a, Act Aug. 7, 1946, c. 783, 60 Stat. 883, related to exemption of certain vessels.

Section 461, R.S. § 4468, Act May 28, 1908, c. 212, § 4, 35 Stat. 425, related to a penalty for failure to keep a list of passengers.

Section 462, R.S. § 4469, related to recovery of penalties.

Former provisions are covered by Revised Title 46 as follows:

Former Provisions	Present Provisions
458.....	Repealed
459.....	3306(a)(2)
460.....	3502(a)-(d)
460a.....	3502(a)(3)
461.....	3502(e)
462.....	2106, 3501(d), 3502(e)
463.....	See 3306(a)(3), (4)
463a.....	See 3306(a)(3), (4)
464.....	See 3606(a)(3), (4), (e)

463 to 464. Repealed. Pub.L. 86-244, § 3(a)(1), (2), (8), Sept. 9, 1959, 73 Stat. 476

Section 463, R.S. § 4470; Act Mar. 3, 1905, c. 1437, § 7, 33 Stat. 1031, related to requirements for steam smothering systems and is now covered by section 481(a)(2) of this title.

Section 463a, Act Oct. 9, 1940, c. 777, § 2(a), 54 Stat. 1028, related to precautions against fire and is now covered by section 481(a)(2) of this title.

Section 463a was also repealed by Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 604.

Section 464, R.S. § 4471; Acts June 30, 1906, c. 3919, 34 Stat. 797; May 27, 1936, c. 463, § 1, 49 Stat. 1380; June 20, 1936, c. 618, 49 Stat. 1540; July 5, 1937, c. 438, 50 Stat. 477; Aug. 10, 1939, c. 644, 53 Stat. 1344, required certain pas-

senger steamers to be equipped with fire pumps and hose, and sprinkler systems, and is now covered by section 481(a)(2), (b)(3) of this title.

Act May 27, 1936, c. 463, § 1, 49 Stat. 1380, was also repealed by Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 603.

Repeals. Section 3(a)(1), (2), (8) of Pub.L. 86-244, Sept. 9, 1959, 73 Stat. 476, which repealed these sections, was repealed by Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 604.

§ 466. Repealed. Oct. 9, 1940, c. 777, § 7, 54 Stat. 1028

Repeals. Section 7 of Act Oct. 9, 1940, c. 777, 54 Stat. 1028, which repealed this section, was

repealed by Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 604.

§§ 466a, 466b. Repealed. Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 601-604

Section 466a, Acts Mar. 3, 1891, c. 521, § 1, 26 Stat. 833; May 28, 1928, c. 824, 45 Stat. 789, related to rules as to accommodations for export animals.

Section 466b, Acts Mar. 3, 1891, c. 521, § 2, 26 Stat. 833; May 28, 1928, c. 824, 45 Stat. 790, provided penalties for violation of rules, regulations, or orders made under section 466a of this

title relating to the required accommodations for export animals.

Former provisions are covered by Revised Title 46 as follows:

Former Provisions	Present Provisions
466a.....	3901
466b.....	3902

§ 466c. Export of horses

(a) Restriction on export of horses

Notwithstanding any other provision of law, no horse may be exported by sea from the United States, or any of its territories or possessions, unless such horse is part of a consignment of horses with respect to which a waiver has been granted under subsection (b) of this section.

(b) Granting of waivers

The Secretary of Commerce, in consultation with the Secretary of Agriculture, may issue regulations providing for the granting of waivers permitting the export by sea of a specified consignment of horses, if the Secretary of Commerce, in consultation with the Secretary of Agriculture, determines that no horse in that consignment is being exported for purposes of slaughter.

(c) Penalties

(1) Criminal penalty

Any person who knowingly violates this section or any regulation, order, or license issued under this section shall be fined not more than 5 times the value of the consignment of horses involved or \$50,000, whichever is greater, or imprisoned not more than 5 years, or both.

(2) Civil penalty

The Secretary of Commerce, after providing notice and an opportunity for an agency hearing on the record, may impose a civil penalty of not to exceed \$10,000 for each violation of this section or any regulation, order, or license issued under this section, either in addition to or in lieu of any other liability or penalty which may be imposed.

(Mar. 3, 1891, c. 521, § 3, as added July 12, 1985, Pub. L. 99-64, Title I, § 125, 99 Stat. 156.)

Prior Provisions. Provisions relating to the export of horses was covered by section 7(j) of the Export Administration Act of 1979 [section 2406(j) of the Appendix to Title 50, War and National Defense] prior to the amendment of that Act by the Export Administration Amendments

Act of 1985 [Pub. L. 99-64] which enacted this section.

Legislative History. For legislative history and purpose of Pub. L. 99-64, see 1985 U.S. Code Cong. and Adm. News, p. 108.

§ 467. Repealed. Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 601-604

Section 467, R.S. § 4474, Acts Oct. 18, 1888, c. 1197, 25 Stat. 564; Feb. 14, 1903, c. 552, § 10, 32 Stat. 829; Mar. 4, 1913, c. 141, § 1, 37 Stat. 736; July 17, 1914, c. 146, 38 Stat. 511; 1946 Reorg.

Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097; Sept. 23, 1950, c. 1002, 64 Stat. 980, related to discharge of petroleum at terminal ports.

§§ 468, 469. Repealed. Oct. 9, 1940, c. 777, § 7, 54 Stat. 1028

See sections 2001(22), (45), 2106, 2107, and 3306(a)(5) of this title.

Repeals. Section 7 of Act Oct. 9, 1940, c. 777, 54 Stat. 1028, which repealed these sections, was

repealed by Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 604.

§§ 470, 471. Repealed. Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 600

Section 470, R.S. § 4477, related to watchmen on passenger steamers.

Section 471, R.S. § 4478, related to punishment for failure to keep watchmen.

Former provisions are covered by Revised Title 46 as follows:

Former Provisions	Present Provisions
470.....	8102
471.....	7703, 8102

§ 472. Repealed. Pub.L. 86-244, § 3(a)(3), Sept. 9, 1959, 73 Stat. 476

Section, R.S. § 4479, required steam vessels to be provided with fire extinguishers. See section 3306(a)(3), (4) of this title.

Repeals. Section 3(a)(3) of Pub.L. 86-244, Sept. 9, 1959, 73 Stat. 476, which repealed this

section, was repealed by Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 604.

§ 473. Repealed. Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 601

Section, R.S. § 4480, Acts Mar. 3, 1905, c. 1456, § 2, 33 Stat. 1028; Mar. 4, 1913, c. 141, § 1, 37 Stat. 736; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60

Stat. 1097, related to steering, navigating, and signaling apparatus. See section 3306(a)(1) of this title.

§§ 474 to 476. Repealed. Pub.L. 86-244, § 3(a)(4) to (6), Sept. 9, 1959, 73 Stat. 476

Section 474, R.S. § 4481, required certain river steamers to carry boats.

Section 475, R.S. § 4482; Act June 4, 1956, c. 349, 70 Stat. 223, related to the carriage of life preservers for passengers and crew on board river steamers and floats in lieu of life preservers.

Section 476, R.S. § 4483; Act Mar. 3, 1905, c. 1456, § 3, 33 Stat. 1028, required certain river steamers to keep prescribed fire buckets and axes.

Former provisions are covered by Revised Title 46 as follows:

Former Provisions	Present Provisions
474.....	See 3306(a)(1), (4), (e)
475.....	See 3306(a)(1), (e)
476.....	See 3306(a)(3), (4)

Repeals. Section 3(a)(4) to (6) of Pub.L. 86-244, Sept. 9, 1959, 73 Stat. 476, which repealed these sections, was repealed by Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 604.

§§ 477 to 483. Repealed. Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 600-604

Section 477, R.S. § 4484, related to stairways and gangways.

Section 478, R.S. § 4485, related to accommodations of deck passengers.

Section 479, R.S. § 4486, related to penalties for not providing proper accommodations for passengers.

Section 480, R.S. § 4487, related to anchoring river steamers when navigation was unsafe.

Section 481, R.S. § 4488, Acts Mar. 2, 1889, c. 418, § 1, 25 Stat. 1012; Apr. 11, 1891, c. 41, 51, 27 Stat. 16; Mar. 3, 1905, c. 1454, § 3, 33 Stat. 1024; Mar. 4, 1913, c. 153, § 14, 38 Stat. 1170; June 12, 1916, c. 141, 39 Stat. 224; June 30, 1932,

c. 314, §§ 501, 502(b), 47 Stat. 415; May 27, 1936, c. 463, § 1, 49 Stat. 1380; Aug. 10, 1939, c. 643, 53 Stat. 1343; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097; Aug. 30, 1954, c. 1076, § 1(29), 68 Stat. 968; Sept. 9, 1959, Pub.L. 86-244, § 1, 73 Stat. 475, related to regulations for vessels subject to the Coast Guard.

Section 482, R.S. § 4490, Act Feb. 27, 1877, c. 69, § 1, 19 Stat. 252; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, related to water-tight bulkheads in lake steamers carrying passengers.

Section 483, Act July 9, 1886, c. 755, § 3, 24 Stat. 129; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, related to water-tight bulkheads as not required on certain steamers.

Former provisions are covered by Revised Title 46 as follows:

Former Provisions	Present Provisions
477-479	3306
480	2301. See 2302(a), 3306(a)(1)
481(a)	2104(34), 3306(a)
481(a)(1)	3306(a)(1), (4)
481(a)(2)	3306(a)(3), (4)
481(a)(3)	3306(a)(1)-(4)
481(a)(4), (5)	3306(a)(4)
481(b)(1)	3306(a)
481(b)(2)	See 3505
481(b)(3)	3306(e)
481(c)	2106, 3318(b)
481(d)	3318(b)
482, 483	3306(a)

§ 484. **Repealed.** June 19, 1934, c. 652, § 702(e), formerly § 602(e), as added May 20, 1937, c. 229, § 15, 50 Stat. 17, and amended Aug. 13, 1954, c. 735, § 5, 68 Stat. 729, eff. Nov. 13, 1954, renumbered Oct. 30, 1984, Pub.L. 98-549, § 6(a), 98 Stat. 2804

Act July 23, 1912, c. 250, § 1, 37 Stat. 199, was also repealed by Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 602.

§§ 485 to 487. **Repealed.** June 19, 1934, c. 652, § 702(e), formerly § 602(e), as added May 20, 1937, c. 229, § 15, 50 Stat. 17, and amended Aug. 13, 1954, c. 735, § 5, 68 Stat. 729, eff. Nov. 13, 1954, renumbered Oct. 30, 1984, Pub.L. 98-549, § 6(a), 98 Stat. 2804

Codification. Act July 23, 1912, c. 250, § 1, 37 Stat. 199, which was set out in the credit to

former section 484 of this title, was repealed by Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 602.

488, 489. **Repealed.** Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 600, 602

Section 488, Act July 23, 1912, c. 250, § 2, 37 Stat. 200, related to the substitute for the second operator of radio apparatus on cargo steamers navigating the Great Lakes.

Section 489, R.S. § 4491, Acts Feb. 14, 1903, c. 552, § 10, 32 Stat. 829; Mar. 4, 1913, c. 141, § 1,

37 Stat. 736; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, related to the use of instruments for security of life on approval by the Commandant of the Coast Guard. See section 3306(b) of this title.

§ 490. **Repealed.** Pub.L. 86-244, § 3(a)(7), Sept. 9, 1959, 73 Stat. 476

Section, R.S. § 4492, provided that barges carrying passengers while in tow of any steamer shall be subject to the provisions of former sections 474 to 476 and 481 of this title relating to fire buckets, axes, life preservers, and yawls, and prescribed a penalty for violation thereof. See

sections 2106, 3306(a)(1), (3), (4), and 3318(a) of this title.

Repeals. Section 3(a)(7) of Pub.L. 86-244, Sept. 9, 1959, 73 Stat. 476, which repealed this section, was repealed by Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 604.

§ 491. **Liability of master and owners for damage to passengers**

West's Federal Forms

Injuries to passengers, complaints, see § 10891 et seq.

Duty of shipowner 17a

Inferences 27a

3. State laws

In proceeding for exoneration from or limitation of liability of owner of a ferryboat on claims

Notes of Decisions

Comparative negligence 19a

~~See 46 USC 1913, 1914, 1915, 1916, 1917, 1918, 1919, 1920, 1921, 1922, 1923, 1924, 1925, 1926, 1927, 1928, 1929, 1930, 1931, 1932, 1933, 1934, 1935, 1936, 1937, 1938, 1939, 1940, 1941, 1942, 1943, 1944, 1945, 1946, 1947, 1948, 1949, 1950, 1951, 1952, 1953, 1954, 1955, 1956, 1957, 1958, 1959, 1960, 1961, 1962, 1963, 1964, 1965, 1966, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 2680, 2681, 2682, 2683, 2684, 2685, 2686, 2687, 2688, 2689, 2690, 2691, 2692, 2693, 2694, 2695, 2696, 2697, 2698, 2699, 2700, 2701, 2702, 2703, 2704, 2705, 2706, 2707, 2708, 2709, 2710, 2711, 2712, 2713, 2714, 2715, 2716, 2717, 2718, 2719, 2720, 2721, 2722, 2723, 2724, 2725, 2726, 2727, 2728, 2729, 2730, 2731, 2732, 2733, 2734, 2735, 2736, 2737, 2738, 2739, 2740, 2741, 2742, 2743, 2744, 2745, 2746, 2747, 2748, 2749, 2750, 2751, 2752, 2753, 2754, 2755, 2756, 2757, 2758, 2759, 2760, 2761, 2762, 2763, 2764, 2765, 2766, 2767, 2768, 2769, 2770, 2771, 2772, 2773, 2774, 2775, 2776, 2777, 2778, 2779, 2780, 2781, 2782, 2783, 2784, 2785, 2786, 2787, 2788, 2789, 2790, 2791, 2792, 2793, 2794, 2795, 2796, 2797, 2798, 2799, 2800, 2801, 2802, 2803, 2804, 2805, 2806, 2807, 2808, 2809, 2810, 2811, 2812, 2813, 2814, 2815, 2816, 2817, 2818, 2819, 2820, 2821, 2822, 2823, 2824, 2825, 2826, 2827, 2828, 2829, 2830, 2831, 2832, 2833, 2834, 2835, 2836, 2837, 2838, 2839, 2840, 2841, 2842, 2843, 2844, 2845, 2846, 2847, 2848, 2849, 2850, 2851, 2852, 2853, 2854, 2855, 2856, 2857, 2858, 2859, 2860, 2861, 2862, 2863, 2864, 2865, 2866, 2867, 2868, 2869, 2870, 2871, 2872, 2873, 2874, 2875, 2876, 2877, 2878, 2879, 2880, 2881, 2882, 2883, 2884, 2885, 2886, 2887, 2888, 2889, 2890, 2891, 2892, 2893, 2894, 2895, 2896, 2897, 2898, 2899, 2900, 2901, 2902, 2903, 2904, 2905, 2906, 2907, 2908, 2909, 2910, 2911, 2912, 2913, 2914, 2915, 2916, 2917, 2918, 2919, 2920, 2921, 2922, 2923, 2924, 2925, 2926, 2927, 2928, 2929, 2930, 2931, 2932, 2933, 2934, 2935, 2936, 2937, 2938, 2939, 2940, 2941, 2942, 2943, 2944, 2945, 2946, 2947, 2948, 2949, 2950, 2951, 2952, 2953, 2954, 2955, 2956, 2957, 2958, 2959, 2960, 2961, 2962, 2963, 2964, 2965, 2966, 2967, 2968, 2969, 2970, 2971, 2972, 2973, 2974, 2975, 2976, 2977, 2978, 2979, 2980, 2981, 2982, 2983, 2984, 2985, 2986, 2987, 2988, 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, 3005, 3006, 3007, 3008, 3009, 3010, 3011, 3012, 3013, 3014, 3015, 3016, 3017, 3018, 3019, 3020, 3021, 3022, 3023, 3024, 3025, 3026, 3027, 3028, 3029, 3030, 3031, 3032, 3033, 3034, 3035, 3036, 3037, 3038, 3039, 3040, 3041, 3042, 3043, 3044, 3045, 3046, 3047, 3048, 3049, 3050, 3051, 3052, 3053, 3054, 3055, 3056, 3057, 3058, 3059, 3060, 3061, 3062, 3063, 3064, 3065, 3066, 3067, 3068, 3069, 3070, 3071, 3072, 3073, 3074, 3075, 3076, 3077, 3078, 3079, 3080, 3081, 3082, 3083, 3084, 3085, 3086, 3087, 3088, 3089, 3090, 3091, 3092, 3093, 3094, 3095, 3096, 3097, 3098, 3099, 3100, 3101, 3102, 3103, 3104, 3105, 3106, 3107, 3108, 3109, 3110, 3111, 3112, 3113, 3114, 3115, 3116, 3117, 3118, 3119, 3120, 3121, 3122, 3123, 3124, 3125, 3126, 3127, 3128, 3129, 3130, 3131, 3132, 3133, 3134, 3135, 3136, 3137, 3138, 3139, 3140, 3141, 3142, 3143, 3144, 3145, 3146, 3147, 3148, 3149, 3150, 3151, 3152, 3153, 3154, 3155, 3156, 3157, 3158, 3159, 3160, 3161, 3162, 3163, 3164, 3165, 3166, 3167, 3168, 3169, 3170, 3171, 3172, 3173, 3174, 3175, 3176, 3177, 3178, 3179, 3180, 3181, 3182, 3183, 3184, 3185, 3186, 3187, 3188, 3189, 3190, 3191, 3192, 3193, 3194, 3195, 3196, 3197, 3198, 3199, 3200, 3201, 3202, 3203, 3204, 3205, 3206, 3207, 3208, 3209, 3210, 3211, 3212, 3213, 3214, 3215, 3216, 3217, 3218, 3219, 3220, 3221, 3222, 3223, 3224, 3225, 3226, 3227, 3228, 3229, 3230, 3231, 3232, 3233, 3234, 3235, 3236, 3237, 3238, 3239, 3240, 3241, 3242, 3243, 3244, 3245, 3246, 3247, 3248, 3249, 3250, 3251, 3252, 3253, 3254, 3255, 3256, 3257, 3258, 3259, 3260, 3261, 3262, 3263, 3264, 3265, 3266, 3267, 3268, 3269, 3270, 3271, 3272, 3273, 3274, 3275, 3276, 3277, 3278, 3279, 3280, 3281, 3282, 3283, 3284, 3285, 3286, 3287, 3288, 3289, 3290, 3291, 3292, 3293, 3294, 3295, 3296, 3297, 3298, 3299, 3300, 3301, 3302, 3303, 3304, 3305, 3306, 3307, 3308, 3309, 3310, 3311, 3312, 3313, 3314, 3315, 3316, 3317, 3318, 3319, 3320, 3321, 3322, 3323, 3324, 3325, 3326, 3327, 3328, 3329, 3330, 3331, 3332, 3333, 3334, 3335, 3336, 3337, 3338, 3339, 3340, 3341, 3342, 3343, 3344, 3345, 3346, 3347, 3348, 3349, 3350, 3351, 3352, 3353, 3354, 3355, 3356, 3357, 3358, 3359, 3360, 3361, 3362, 3363, 3364, 3365, 3366, 3367, 3368, 3369, 3370, 3371, 3372, 3373, 3374, 3375, 3376, 3377, 3378, 3379, 3380, 3381, 3382, 3383, 3384, 3385, 3386, 3387, 3388, 3389, 3390, 3391, 3392, 3393, 3394, 3395, 3396, 3397, 3398, 3399, 3400, 3401, 3402, 3403, 3404, 3405, 3406, 3407, 3408, 3409, 3410, 3411, 3412, 3413, 3414, 3415, 3416, 3417, 3418, 3419, 3420, 3421, 3422, 3423, 3424, 3425, 3426, 3427, 3428, 3429, 3430, 3431, 3432, 3433, 3434, 3435, 3436, 3437, 3438, 3~~

ut of automobile's plunging off boat and er, claims for injuries not resulting in ose in and were governed by maritime claims for death, which occurred upon : waters within state's jurisdiction, came :as death statute, and, accordingly, boat ould not be held liable for deaths under on dealing with safe carriage of passen- baggage. *Petition of Nueces County, oad Dist. No. 4, D.C.Tex.1959, 174 846.*

ility generally

shipowner is not an insurer of safety of rs, it is bound not only by what it actual- s but by what it should have known. ick Shipping Corp. v. Stratt, C.A.Fla. 2 F.2d 648.

owner cannot be held personally liable ult of a compulsory pilot, but the ship liable in rem for such pilot's fault. Con- Aggregates Corp. v. S.S. Azalea City, 1975, 399 F.Supp. 662.

ia Canal Company was liable for damage owner as result of negligence of Compa- in conning vessel in Canal Zone. Gulf s. v. Panama Canal Co., D.C.Canal Zone 1 F.Supp. 1307, affirmed 437 F.2d 111, ented 335 F.Supp. 406, modified on other 481 F.2d 561.

engers

r is bound to exercise highest degree of l diligence in providing for safety of its rs. *Complaint of Compagnie Generale antique, D.C.Puerto Rico 1975, 392 973.*

worthiness of vessel

owner owes his passengers a high decree but a passenger must recover, if at all, of negligence, and shipowner does not ity to passengers, as he does to seamen, to a "seaworthy" vessel. *Isham v. Pacific t Line, Inc., C.A.Guam 1973, 476 F.2d*

inty of seaworthiness and absolute liability ches to breach thereof is applicable only en and not to passengers; however, any o provide seaworthy vessel might properly dered in determination of whether owner ormed to standard of care owed to pas-

Complaint of Compagnie Generale antique, D.C.Puerto Rico 1975, 392 973.

aw, competency and sufficiency

uty of navigator to obtain all information y to proper management of vessel. *Com- f Compagnie Generale Transatlantique, rto Rico 1975, 392 F.Supp. 973.*

company pilot must exercise degree of monly possessed by others in the same ent and he is liable for damage caused by e to exercise the diligence which others situated would ordinarily have exercised. *Corp. v. Panama Canal Co., D.C.Canal '0, 311 F.Supp. 1307, affirmed 437 F.2d lemented 335 F.Supp. 406, modified on unds 481 F.2d 561.*

17a. Duty of shipowner

Shipowner owes duty of exercising reasonable care to those who are lawfully on board for purposes not inimical to shipowner's legitimate interests and who are not members of crew. *Brewer v. E.J. Platt Fisheries, Inc., C.A.Miss. 1975, 511 F.2d 182.*

Where a passenger or cruise vessel puts into numerous ports in the course of a cruise, the stopovers are the sine qua non of the cruise, and shipowner has duty to exercise high degree of care in seeing to safe embarking and disembarking of the passengers. *Isham v. Pacific Far East Line, Inc., C.A.Guam 1973, 476 F.2d 835.*

Shipowner owes to its passengers the duty of a high degree of care. *McCormick Shipping Corp. v. Stratt, C.A.Fla.1963, 322 F.2d 648.*

18. Negligence of owner, master, pilot, or crew

Where plaintiff purchased passage from San Francisco to Guam on ship whose primary purpose was transportation of cargo and no showing was made that stop at Wake Island was part of inducement offered plaintiff for travelling on the ship, she was not encouraged to go ashore and craft on which she went ashore and was to return was not owned by shipowner, plaintiff was not entitled to recover against shipowner, on theory of nondelegable duty to provide proper and safe transportation between ship anchorage and Wake Island, for personal injuries she sustained while returning to ship on landing craft. *Isham v. Pacific Far East Line, Inc., C.A.Guam 1973, 476 F.2d 835.*

Where ship was under sole command of pilot, captain and crew of ship were not guilty of any negligence contributing proximately to collision when ship struck dry dock while approaching her assigned berth at terminal at harbor. *Latex Const. Co. v. Jacksonville Shipyards, Inc., C.A.S. C.1971, 442 F.2d 450.*

Considering pilot's familiarity with harbor, his ability to judge dredge's approximate location in blocking part of normal approach channel to harbor, his admitted recognition of difficulty of executing a starboard turn past dredge on flood tide and his receipt of warning to go around island from tugs which he knew to be in a better position to judge obstruction of channel, pilot was negligent in choosing shorter route and had to share responsibility for collision when steamship struck dry dock while approaching assigned berth at terminal at harbor. *Id.*

Mistaken judgment in handling of vessel, viewed from vantage point afforded by hindsight, is not to be imputed as fault. *Complaint of Compagnie Generale Transatlantique, D.C.Puerto Rico 1975, 392 F.Supp. 973.*

Owners of vessels which are boarded by qualified pilots who are experienced inland pilots and take vessels over and pilot them to or from port are liable for acts of such pilots. *Cabins Tanker Industries, Inc. v. The Rio Maracana, D.C.Va. 1960, 182 F.Supp. 811, affirmed 285 F.2d 592, certiorari denied 81 S.Ct. 1902, 366 U.S. 948, 6 L.Ed.2d 1241.*

19. Contributory negligence

Dredge which was blocking part of normal approach channel to harbor was negligent and

contributed proximately to collision when steamship struck dry dock while approaching assigned berth at terminal at harbor. *Latex Const. Co. v. Jacksonville Shipyards, Inc.*, C.A.S.C.1971, 442 F.2d 450.

Under Coast Guard regulation governing signal which should be used in situations where ship has to pass a dredge working in a navigation channel and imposing on dredge only duty to warn if channel is not clear for passage, dredge's determination not to give a warning signal, whether correct or incorrect under particular circumstances, does not relieve pilot from obligation to use his own judgment whether to attempt passage under circumstances as he should reasonably be able to perceive them. *Id.*

19a. Comparative negligence

In light of facts, *inter alia*, that only damages defendant charterer of second vessel suffered were damages attributable to causes other than negligence, if any, of plaintiff, injured captain of first vessel, that such element had already been deducted from damages due captain, that if there was no negligence on captain's part there would be no occasion for owner of first vessel to look to him for contribution, that if captain were wholly at fault he would recover nothing and charterer's third-party claim against owner would fall, and that if captain were partly at fault the damages assessed would be reduced to take his fault into account, owner could not recover over against captain. *Shiver v. Burnside Terminal Co.*, D.C. La.1975, 392 F.Supp. 1078.

Action by captain of first vessel against charterer of second vessel for injuries sustained in collision was governed by comparative negligence rules of apportionment according to degree of fault, and thus captain would be able to recover the percentage of his damages not attributable to his own negligence. *Id.*

26. Evidence—Admissibility

In action by shipowner for limitation of or exoneration from liability arising from grounding of ship on uncharted reef, evidence established that navigation of narrow and shallow passage which was surrounded by shoal water and rocks using navigation charts based on surveys made in late nineteenth century was negligent. Complaint

of *Compagnie Generale Transatlantique, D.C. Puerto Rico* 1975, 392 F.Supp. 973.

27. — Weight and sufficiency

Evidence was ample to sustain charge of negligence on part of shipowner, for failure to inspect ship and to discover defect, and fact of substantial injury to passenger who fell and was injured when small closet door on ship swung open due to defective lock on door. *McCormick Shipping Corp. v. Stratt*, C.A.Fla.1963, 322 F.2d 648.

In action by shipowner for limitation of or exoneration from liability arising from grounding of ship on uncharted reef, evidence established that captain's use of French navigation chart instead of American chart based on more recent survey was not negligent. Complaint of *Compagnie Generale Transatlantique, D.C. Puerto Rico* 1975, 392 F.Supp. 973.

Evidence in action by vessel owner against Panama Canal Company for rudder damage allegedly caused by touching of bank or bottom while Company's pilot was conning the vessel in the Canal Zone established that damage was not caused by error in judgment and that pilot in failing to use tug in making turn failed to exercise necessary skill and was negligent and that negligence was proximate cause of damage to vessel. *Gulf Oil Corp. v. Panama Canal Co.*, D.C. Canal Zone 1970, 311 F.Supp. 1307, affirmed 437 F.2d 111, supplemented 335 F.Supp. 406, modified on other grounds 481 F.2d 561.

27a. Inferences

Failure of ship to make safe transit while Panama Canal Company's pilot was conning vessel in Canal Zone and vessel's striking the bank created inference of negligence on part of Company's pilot. *Gulf Oil Corp. v. Panama Canal Co.*, D.C. Canal Zone 1970, 311 F.Supp. 1307, affirmed 437 F.2d 111, supplemented 335 F.Supp. 406, modified on other grounds 481 F.2d 561.

29. Damages

Any claim that charterer of second vessel might have against owner of first vessel for personal injuries due to collision would be governed by collision rules of damage apportionment. *Shiver v. Burnside Terminal Co.*, D.C. La.1975, 392 F.Supp. 1078.

§ 492. Repealed. Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 600

Section, R.S. § 4494, Acts Feb. 14, 1903, c. 552, § 10, 32 Stat. 829; Mar. 4, 1913, c. 141, § 1, 37 Stat. 736; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097,

related to copies of laws governing marine inspection to be kept on passenger vessels. See section 3506 of this title.

§ 493. Repealed. Pub.L. 96-594, Title I, § 127, Dec. 24, 1980, 94 Stat. 3459

Section, R.S. § 4495, related to exhibition of name of steamer. See section 12116(c) of this title.

Effective Date of Repeal; Savings Provisions. Section repealed effective on the first day of the eighteenth month following the month Title I of

Pub.L. 96-594 was enacted, December 1980, except with respect to rights and duties that matured, penalties that were incurred, and proceedings that were begun before such effective date, see sections 127 and 128 of Pub.L. 96-594, set out as notes under section 65 of this title.

Repealed

§§ 494, 495. Repealed. Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 600

Section 494, R.S. § 4496, related to duties of customs officers.

Section 495, R.S. § 4497, related to penalties for omission of duty by customs officers.

§ 496. Repealed. Pub.L. 96-594, Title I, § 127, Dec. 24, 1980, 94 Stat. 3459

Section, R.S. § 4498; Acts Mar. 3, 1905, c. 1457, § 9, 33 Stat. 1032; Mar. 4, 1915, c. 184, § 5, 38 Stat. 1218; June 2, 1939, c. 168, 53 Stat. 798, related to denial of registry or enrollment of vessels not complying with law. See sections 3310, 3311, and 12103 of this title.

Act Mar. 4, 1915, c. 184, § 5, 38 Stat. 1218, was also repealed by Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 602.

Effective Date of Repeal; Savings Provisions. Section repealed effective on the first day of the eighteenth month following the month Title I of Pub.L. 96-594 was enacted, December 1980, except with respect to rights and duties that matured, penalties that were incurred, and proceedings that were begun before such effective date, see sections 127 and 128 of Pub.L. 96-594, set out as notes under section 65 of this title.

§§ 497, 498. Repealed. Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 600, 601

Section 497, R.S. § 4499, Act Mar. 3, 1905, c. 1454, § 4, 33 Stat. 1025, related to penalties for failure to comply with other provisions. See sections 2106, 3318(a), and 8502(e) of this title.

Section 498, R.S. § 4500, related to penalties in cases otherwise not provided for.

CHAPTER 16—REGULATION OF MOTOR BOATS [REPEALED]

SUBCHAPTER I—GENERAL PROVISIONS

§§ 511 to 519. Repealed. Apr. 25, 1940, c. 155, § 19, 54 Stat. 167

See sections 2101(16), (37), (43), 2106, 2107(b), 2302(b), 2303(a), 3301(8), (9), 3305(a)(2), 3306, 4102 to 4104, 4106, 4311(a), 6101, 6102, 8903, 12303, and 12304(a) of this title.

Repeals. Section 19 of Act Apr. 25, 1940, c. 155, 54 Stat. 167, which repealed this section, was repealed by Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 604.

§§ 521, 522. Repealed. Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 603

Section 521, Act Aug. 7, 1939, c. 558, § 1, 53 Stat. 1257, related to exemption of outboard motorboats for racing from provisions of sections 514 and 516 of this title. See section 4103 of this title.

Section 522, Act Aug. 7, 1939, c. 558, § 2, 53 Stat. 1257, related to exempting motorboats from carrying copies of pilot rules.

SUBCHAPTER II—MOTORBOAT ACT OF 1940

§§ 526, 526a. Repealed. Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 600, 604, 605

Section 526, Act Apr. 25, 1940, c. 155, § 1, 54 Stat. 163; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, related to definition of "motorboat" and to motorboat inspections. See section 2101(16), (43) of this title.

Section 1 of Pub.L. 85-911, Sept. 2, 1958, 72 Stat. 1754, which provided for the citation of

Pub.L. 85-911 as the "Federal Boating Act of 1958", and which was set out as a note under former section 526 of this title, was repealed by Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 604.

Section 526a, Act Apr. 25, 1940, c. 155, § 2, 54 Stat. 163, related to classification of motorboats.

§§ 526b to 526d. Repealed. Pub.L. 96-591, § 8(a), Dec. 24, 1980, 94 Stat. 3435

Section 526b, Acts Apr. 25, 1940, c. 155, § 3, 54 Stat. 164; June 4, 1956, c. 353, §§ 1, 2, 70 Stat. 228, set out the required lights which motorboats were required to display. See section 2020

et seq. of Title 33, Navigation and Navigable Waters.

Section 526c, Act Apr. 25, 1940, c. 155, § 4, 54 Stat. 164, related to the requirement that motor-

SHIPPING

46 § 526/ Repealed

boats of classes 1, 2, and 3 be provided with a whistle or other sound producing device. See section 2032 et seq. of Title 33, Navigation and Navigable Waters.

Section 526d, Act Apr. 25, 1940, c. 155, § 5, 54 Stat. 164, related to the requirement that motorboats of classes 2 and 3 be provided with an efficient bell. See section 2032 et seq. of Title 33, Navigation and Navigable Waters.

§ 526e. Repealed. Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 600, 604

Section, Act Apr. 25, 1940, c. 155, § 6, 54 Stat. 164; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, related

Act Apr. 25, 1940, c. 155, §§ 3-5, 54 Stat. 164, were also repealed by Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 604.

Effective Date of Repeal. Repeal effective Dec. 24, 1981, see section 7 of Pub.L. 96-591, set out as a note under section 2001 of this title.

§ 526f. Repealed. Pub.L. 92-75, § 41(a)(1), Aug. 10, 1971, 85 Stat. 228

Section, Acts Apr. 25, 1940, c. 155, § 7, 54 Stat. 165; 1946 Reorg. Plan No. 3, §§ 101 to 104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097; May 10, 1956, c. 258, § 6(c), 70 Stat. 154, required licensed operators for motorboats and small craft of 15 tons or less, propelled by machinery other than steam, carrying passengers for hire and provided for the granting of an operator's license by the Secretary. See section 8903 of this title.

Acts Apr. 25, 1940, c. 155, § 7, 54 Stat. 165; May 10, 1956, c. 258, § 6(c), 70 Stat. 154, were also repealed by Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 604.

Repeals. Section 41(a)(1) of Pub.L. 92-75, Aug. 10, 1971, 85 Stat. 228, which repealed this section, was repealed by Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 605.

Savings Provisions. Any criminal or civil penalty proceeding under the Motorboat Act of 1940, as amended, section 526 et seq. of this title, or the Federal Boating Act of 1958, as amended, former section 527 et seq. of this title, for a violation which occurred before Aug. 10, 1971, to be initiated and continue to conclusion as though the former Acts had not been amended or repealed by Pub.L. 92-75, Aug. 10, 1971, 85 Stat. 213, see section 41(f) of Pub.L. 92-75, set out as a note under section 1483 of this title.

§§ 526g to 526k. Repealed. Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 600, 604

Section 526g, Act Apr. 25, 1940, c. 155, § 8, 54 Stat. 165; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, related to fire extinguishers. See section 4102(a) of this title.

Section 526h, Act Apr. 25, 1940, c. 155, § 9, 54 Stat. 165, related to exemption of racing outboard motorboats from requirement of sound and fire extinguishing equipment. See section 4103 of this title.

Section 526i, Act Apr. 25, 1940, c. 155, § 10, 54 Stat. 165; 1946 Reorg. Plan No. 3, §§ 101-104,

eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, related to carburetor flame arrestors and backfire traps. See section 4102(c) of this title.

Section 526j, Act Apr. 25, 1940, c. 155, § 11, 54 Stat. 165; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, related to ventilation of engine and fuel compartment bilges on open vessels using volatile liquids as fuel. See section 4102(d) of this title.

Section 526k, Act Apr. 25, 1940, c. 155, § 12, 54 Stat. 166, related to carrying copies of pilot rules.

§ 526l. Repealed. Pub.L. 92-75, § 41(a)(1), (2), Aug. 10, 1971, 85 Stat. 228

Section, Acts Apr. 25, 1940, c. 155, § 13, 54 Stat. 166; Sept. 2, 1958, Pub.L. 85-911, § 6(a), 72 Stat. 1756, prohibited reckless or negligent operation of vessels, provided for accident assistance and for the filing of accident reports. See, as to former subsecs. (a)-(c), sections 2302(b), 2303(a)(1), (2), and 6101 of this title, respectively.

Acts Apr. 25, 1940, c. 155, § 13, 54 Stat. 166; Sept. 2, 1958, Pub.L. 85-911, § 6(a), 72 Stat.

1756, were also repealed by Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 604.

Repeals. Section 41(a)(1), (2) of Pub.L. 92-75, Aug. 10, 1971, 85 Stat. 228, which repealed this section, was repealed by Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 605.

§ 526m. Repealed. Pub.L. 92-75, § 41(a)(1), Aug. 10, 1971, 85 Stat. 228

Section, Act Apr. 25, 1940, c. 155, § 14, 54 Stat. 166, provided that any person operating a vessel in a reckless or negligent manner be deemed guilty of a misdemeanor and on conviction be punished by a fine not exceeding \$2,000 and/or imprisonment not exceeding 1 year at the court's discretion. See sections 2302(b) and 4311(a) of this title.

Act Apr. 25, 1940, c. 155, § 14, 54 Stat. 166, was also repealed by Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 604.

Repeals. Section 41(a)(1) of Pub.L. 92-75, Aug. 10, 1971, 85 Stat. 228, which repealed this section, was repealed by Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 605.

526n to 526p. Repealed. Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 600, 604

Section 526n, Act Apr. 25, 1940, c. 155, § 15, 54 Stat. 166, related to arrest for negligent operation of vessels, and procedure after arrest.

Section 526o, Act Apr. 25, 1940, c. 155, § 16, 54 Stat. 166, related to violations generally, and penalties. See sections 2106 and 4106 of this title.

Section 526p, Act Apr. 25, 1940, c. 155, § 17, 54 Stat. 166; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, related to regulations, remission or mitigation of fines, penalties, etc. See sections 2107(b), 3306, and 4104 of this title.

§ 526q. Repealed. Pub.L. 96-378, § 11(d), Oct. 6, 1980, 94 Stat. 1519

Section, Act Apr. 25, 1940, c. 155, § 18, 54 Stat. 166, provided for nonapplication of section 223 provision respecting minimum number of officers to motorboats under this subchapter and exemption of such motorboats from section 361 definition of steam vessels. See sections 2101(37), 3301(9), and 8903 of this title.

Act Apr. 25, 1940, c. 155, § 18, 54 Stat. 166, was also repealed by Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 604.

Repeals. Section 11(d) of Pub.L. 96-378, Oct. 6, 1980, 94 Stat. 1519, which repealed this section,

was repealed by Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 605.

Savings Provisions. Section 11 of Pub.L. 96-378, which provided in part that the Acts of July 8, 1941, chapters 279 and 280, the Act of September 25, 1941, the Act of June 16, 1938, and section 18 of the Act of April 25, 1940, were repealed, except with respect to rights and duties that matured, penalties that were incurred, and proceedings that were begun before Oct. 6, 1980, was repealed by Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 605.

526r, 526s. Repealed. Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 600, 604

Section 526r, Act Apr. 25, 1940, c. 155, § 19, 54 Stat. 167, enumerated laws which were to be unaffected by Act Apr. 25, 1940.

Section 526s, Act Apr. 25, 1940, c. 155, § 20, 54 Stat. 167, related to authorization of appropriations.

§ 526t. Repealed. Pub.L. 85-911, § 12, Sept. 2, 1958, 72 Stat. 1758, eff. Apr. 1, 1960

Section, Act Apr. 25, 1940, c. 155, § 21, 54 Stat. 167, related to necessity of keeping on board certificate of award of number. See sections 12303 and 12304(a) of this title.

Act Apr. 25, 1940, c. 155, § 21, 54 Stat. 167, was also repealed by Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 604.

Repeals. Section 12 of Pub.L. 85-911, Sept. 2, 1958, 72 Stat. 1758, which repealed this section, was repealed by Pub.L. 92-75, § 41(a)(2), Aug. 10, 1971, 85 Stat. 228. Section 12 of Pub.L. 85-911 was additionally repealed and section 41(a)(2) of Pub.L. 92-75 was also repealed by Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 604, 605.

§ 526u. Repealed. Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 600, 604

Section, Act Apr. 25, 1940, c. 155, § 22, as added Sept. 2, 1958, Pub.L. 85-911, § 6(c), 72 Stat. 1756, and amended Aug. 10, 1971, Pub.L. 92-75, § 41(b), 85 Stat. 228, related to application

of this subchapter, and definition of "State". See, as to former subsecs. (a) and (b), sections 4101 and 2101(36) of this title, respectively.

SUBCHAPTER III—FEDERAL BOATING PROGRAM OF 1958

§§ 527 to 527h. Repealed. Pub.L. 92-75, § 41(a)(2), (4), Aug. 10, 1971, 85 Stat. 228

Section 527, Pub.L. 85-911, § 2, Sept. 2, 1958, 72 Stat. 1754; Pub.L. 87-171, § 1(1), Aug. 30, 1961, 75 Stat. 408, defined the terms "undocumented vessel", "vessel", "Secretary", "owner" and "State". See sections 2101(34), (36), -(41), (45) and 2102(2) of this title.

Section 527a, Pub.L. 85-911, § 3, Sept. 2, 1958, 72 Stat. 1754; Pub.L. 87-171, § 1(2), Aug. 30, 1961, 75 Stat. 408, provided for the numbering of vessels to be secured in the State of principal use or from the Federal numbering system if State of principal use has no approved numbering system, required the Secretary to establish an overall numbering system and set standards for the approval by the Secretary of State numbering systems, provided for the duration of initial or renewal certificates under Federal system, required display of number, set size of the certificate, required its availability for inspection, set out the documentary nature of the certificate and provided for withdrawal of approval of State system upon notice. See sections 12301 to 12308 of this title.

Section 527b, Pub.L. 85-911, § 4, Sept. 2, 1958, 72 Stat. 1756, required the owner of any vessel numbered under the Federal system to notify the Secretary of transfer of interest, destruction or abandonment of the vessel or change of owner's address. See section 12304(b) of this title.

Section 527c, Pub.L. 85-911, § 5, Sept. 2, 1958, 72 Stat. 1756, permitted the Secretary to prescribe reasonable fees for the numbering of a vessel or renewal thereof. See section 12307 of this title.

Section 527d, Pub.L. 85-911, § 7, Sept. 2, 1958, 72 Stat. 1757, required the Secretary to make rules and regulations necessary to carry out the provisions of this subchapter and permitted the Secretary to exempt vessels from the Federal numbering system. See sections 12303 and 12307 of this title.

Section 527e, Pub.L. 85-911, § 8, Sept. 2, 1958, 72 Stat. 1757; Pub.L. 87-171, § 1(2), Aug. 30, 1961, 75 Stat. 408, established penalties for violations of numbering provisions of this subchapter, provided for assessment and collection of penalties by Secretary, and in his discretion the remission or mitigation of penalties or the discontinuance of prosecution for penalties under this section and permitted the inspection of a vessel covered by this subchapter or subchapter II by the Coast Guard. See sections 2106, 2107(a), (b), 2302(a), (c), 4308, 4311(b)-(d), and 12309(b), (c) of this title.

Section 527f, Pub.L. 85-911, § 9, Sept. 2, 1958, 72 Stat. 1757, set out a congressional declaration of policy with regard to this subchapter.

Section 527g, Pub.L. 85-911, § 10, Sept. 2, 1958, 72 Stat. 1757, authorized Secretary to compile, analyze and publish accident reports, findings concerning the causes of such accidents and recommendations for their prevention and provided these reports be available for public inspection. See sections 6101(a), (d), (e), 6102, 13101, 13102, 13109, and 13110 of this title.

Section 527h, Pub.L. 85-911, § 13, Sept. 2, 1958, 72 Stat. 1758; Pub.L. 87-171, § 1(2), Aug. 30, 1961, 75 Stat. 408, provided enforcement provisions for the States and Federal government, declared State jurisdiction to be unimpaired and prohibited the Secretary from approving any State numbering system not complying with standards set forth in former section 527a. See sections 4311(g), 12302, and 12307 of this title.

Pub.L. 85-911, Sept. 2, 1958, 72 Stat. 1754, cited as a credit under sections 527 to 527h of this title, was also repealed by Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 604.

Repeals. Section 41(a)(2), (4) of Pub.L. 92-75, Aug. 10, 1971, 85 Stat. 228, which repealed sections 527 to 527h was repealed by Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 605.

CHAPTER 17—REGULATION OF FISHING VOYAGES

§ 531. Agreement for fishing voyage

Notes of Decisions

11. Liens—Generally

This section requiring certain vessels to make agreements does not preclude other shipping vessels, engaged in other fisheries, from making similar agreements with their fishermen, on basis of share of catch of whatever other fish they may be engaged in fishing; and all that section 533 of this

title does is to establish, in favor of cod or mackerel fishermen with whom such contracts have been made, lien on vessel; and fishermen on shares, other than cod and mackerel fishermen, have lien on vessels by which they are hired and are entitled to bring libels in rem against vessels to recover their shares of catch or proceeds thereof, in lieu of wages. *Harrison v. The Beverly Lynn*, D.C.Puerto Rico, 1959, 172 F.Supp. 719.

§ 533. Recovery of shares of fish under agreement

West's Federal Forms

Process in rem, see § 11177 et seq.

See 1987 Special Pamphlet for Partially Revised Title 46

§ 534. Discharge of vessel on bond by owner

West's Federal Forms

Admiralty bonds, see § 11273.

CHAPTER 18—MERCHANT SEAMEN

SHIPPING COMMISSIONERS

Sec.

541 to 549. Repealed.

SHIPMENT OF CREW

561 to 579. Repealed.

WAGES OF MASTERS AND SEAMEN

591 to 608. Repealed.

WAGES ON CANAL BOATS

611. Repealed.

EFFECTS OF DECEASED SEAMEN

621 to 628. Repealed.

DISCHARGE

641 to 646. Repealed.

Sec.

PROTECTION AND RELIEF

651 to 673. Repealed.

678 to 680. Repealed.

682 to 685. Repealed.

688. Recovery for injury or death of seaman.

(a) Application of railway employee statutes; jurisdiction.

(b) Limitation for certain aliens; applicability in lieu of other remedy.

689 to 692. Repealed.

OFFENSES AND PUNISHMENTS

701 to 710a. Repealed.

710b, 710c. Transferred.

711 to 713. Repealed.

SHIPPING COMMISSIONERS

§ 541. Repealed. Pub.L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 635, 639

Section, R.S. § 4501; Acts June 26, 1884, c. 121, § 27, 23 Stat. 59; June 19, 1886, c. 421, § 1, 24 Stat. 79; Feb. 14, 1903, c. 552, § 10, 32 Stat. 829; Mar. 4, 1913, c. 141, § 1, 37 Stat. 736; June 10, 1921, c. 18, § 304, 42 Stat. 24, related to the

appointment, accounts and compensation of shipping commissioners.

R.S. § 4501; June 19, 1886, c. 421, § 1, 24 Stat. 79, was also repealed by Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 600, 601.

542 to 549. Repealed. Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 600-602

Section 542, R.S. § 4502, Acts Apr. 26, 1906, c. 1875, 34 Stat. 137; Mar. 4, 1913, c. 141, § 1, 37 Stat. 736, related to the bonds and oaths of shipping commissioners.

Section 542a, R.S. § 4595, Act June 19, 1886, c. 421, § 1, 24 Stat. 79; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, related to the demanding or receiving of remuneration for supplying seamen for merchant vessels and to the penalties therefor.

Section 543, R.S. § 4503; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, set out the conditions under which officers of customs were to act.

Section 544, Act June 9, 1874, c. 260, 18 Stat. 64; Mar. 3, 1911, c. 231, § 291, 36 Stat. 1167, related to vessels in coastwise trade.

Section 545, R.S. § 4508; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, related to duties of Coast Guard officials to whom the duties of shipping commissioner had been delegated.

Section 546, R.S. § 4504; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, related to penalties for personating a shipping commissioner.

Section 547, R.S. § 4505, related to employment and duties of clerks for shipping commissioners.

Section 548, R.S. § 4506, related to seals of shipping commissioners and the effect as evidence of instruments signed and sealed by them.

Section 549, R.S. § 4507; Act Mar. 3, 1897, c. 389, § 1, 29 Stat. 687, related to the furnishing of office space and supplies for shipping commissioners.

Former provisions are covered by Revised Title 46 as follows:

Former Provisions	Present Provisions
542.....	Repealed. See 10305(c)
542a.....	Repealed. See 10314(b), 10505(b)
543.....	2104
544.....	Repealed. See 10501(a), (b)
545.....	Repealed. See 2104, 10102(a), (b), 10507
546.....	10102(c). See Title 18 § 912

SHIPMENT OF CREW

561 to 578. Repealed. Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 600-602

Section 561, R.S. § 4509; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, related to the apprenticing of boys to sea.

Section 562, R.S. § 4510; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, related to indentures of apprentice to be produced to commissioner.

Section 563, Acts June 19, 1886, c. 421, § 2, 24 Stat. 80; Aug. 19, 1890, c. 801, 26 Stat. 320; Feb. 18, 1895, c. 97, 28 Stat. 667; Mar. 3, 1897, c. 389 § 8, 29 Stat. 689; Apr. 11, 1904, c. 1140, 33 Stat. 168; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, related to shipment of crews and shipping agreements.

Section 564, R.S. § 4511, Acts Mar. 3, 1897, c. 389, § 19, 29 Stat. 691; Feb. 14, 1903, c. 552, § 10, 32 Stat. 829; Mar. 4, 1913, c. 141, § 1, 37 Stat. 736; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, related to shipping articles.

Section 565, R.S. § 4512; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, related to rules for shipping articles.

Section 566, R.S. § 4513, Act Feb. 27, 1877, c. 69, § 1, 19 Stat. 252, related to exceptions as to shipping articles.

Section 567, R.S. § 4514, related to penalties for shipping without agreement.

Section 568, R.S. § 4515, related to penalties for knowingly shipping seamen without articles.

Section 569, R.S. § 4516, Acts Dec. 21, 1898, c. 28, §§ 1, 26, 30 Stat. 755, 764; Mar. 4, 1915, c. 153, § 1, 38 Stat. 1164, related to shipping seamen to replace those lost by desertion or casualty.

Section 570, R.S. § 4517, Act Apr. 5, 1906, c. 1366, § 3, 34 Stat. 100; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, related to shipping seamen in foreign ports.

Section 571, R.S. § 4518, Act Apr. 5, 1906, c. 1366, § 3, 34 Stat. 100, related to a penalty for violating section 570 of this title.

Section 572, Act June 26, 1884, c. 121, § 19, 23 Stat. 58, related to voyages or terms for which seamen may be shipped, and reshipment.

Section 573, Act June 26, 1884, c. 121, § 20, 23 Stat. 58, related to voyages or terms of seamen shipped in foreign port, reshipment, and bonds.

Section 574, R.S. § 4520, related to shipping articles for vessels in coasting trade.

Section 575, R.S. § 4521, related to penalty for shipping without articles.

Section 576, R.S. § 4522, Acts Feb. 27, 1877, c. 69, § 1, 19 Stat. 252; Dec. 21, 1898, c. 28, §§ 2, 26, 30 Stat. 755, 764, related to penalty for omitting to begin voyage.

Section 577, R.S. § 4519, related to posting a copy of agreement.

Section 578, R.S. § 4523, related to unlawful shipments as void.

Former provisions are covered by Revised Title 46 as follows:

Former Provisions	Present Provisions
561, 562	Repealed
563 first par.	11110. See 10507(a)
563 Second par.	11110. See 10507(b)
564 intro. par.	10301(a)(1), (2), 10302(a)
564 First-Third items	10301(b)(1)-(3)
564 Fourth-Sixth items	10301(b)(2), (4), (6)
564 Seventh item	10301(b)(5)
564 Eighth item	10301(b)(7), (8)
565 First par.	10305(a)(1), (2)
565 Second par.	10305(b)
565 Third par. and Form	10305(c)
566	10301(b)
567, 568	10321
569	10309(a)-(c)
570, 571	10308(a), (b)
572, 573	Repealed
574	10301(a)(2), 10501(a), 10502(a)
575	10508(a), (b)
576	10509(a)-(c)
577	10307
578	11107

WAGES OF MASTERS AND SEAMEN

591 to 608. Repealed. Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 600-604

Section 591, R.S. § 4524, related to commencement of seamen's wages.

Section 592, R.S. § 4525, related to wages as not dependent on freight earned.

Section 593, R.S. § 4526, Acts Dec. 21, 1898, c. 28, §§ 3, 26, 30 Stat. 755, 764; Mar. 5, 1934, c. 40, 48 Stat. 395, related to termination of wages by loss of vessel and transportation to place of shipment.

Section 594, R.S. § 4527, related to right to wages in case of improper discharge.

Section 595, R.S. § 4528, related to conduct as affecting right.

Section 596, R.S. § 4529, Acts Dec. 21, 1898, c. 28, §§ 4, 26, 30 Stat. 756, 764; Mar. 4, 1915, c. 153, § 3, 38 Stat. 1164, related to time for payment.

Section 597, R.S. § 4530, Acts Dec. 21, 1898, c. 28, §§ 5, 26, 30 Stat. 756, 764; Mar. 4, 1915, c. 153, § 4, 38 Stat. 1165; June 5, 1920, c. 250, § 31, 41 Stat. 1006, related to payment at ports.

Section 598, Act June 28, 1906, c. 3583, § 4, 34 Stat. 551, related to vessels engaged in taking oysters.

Section 599, Acts June 26, 1884, c. 121, § 10, 23 Stat. 55; Dec. 21, 1898, c. 28, §§ 24, 26, 30 Stat. 763, 764; Apr. 26, 1904, c. 1603, § 1, 33 Stat. 308; Mar. 4, 1915, c. 153, § 11, 38 Stat. 1168; June 5, 1920, c. 250, § 32, 41 Stat. 1006; June 30, 1932, c. 314, § 501, 47 Stat. 415; May 27, 1936, c. 463, § 1, 49 Stat. 1380; May 31, 1939, c. 158, 53 Stat. 794; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097; Sept. 29, 1950, c. 1109, 64 Stat. 1081; Jan. 10, 1951, c. 1222, 64 Stat. 1239, related to advances and allotments.

Section 600, R.S. § 4535, Act Apr. 25, 1968, Pub.L. 90-293, § 1(c), 82 Stat. 108, related to agreements as to loss of lien or right to wages.

Section 601, Acts Mar. 4, 1915, c. 153, § 12, 38 Stat. 1169; Sept. 14, 1959, Pub.L. 86-263, 73 Stat. 551; Apr. 25, 1968, Pub.L. 90-293, § 1(d), 82 Stat. 108; Oct. 25, 1982, Pub.L. 97-362, Title I, § 108, 96 Stat. 1731, related to attachment or arrest of wages, support of wife and minor children, and state tax laws.

Section 602, R.S. § 4537, related to limit of sum recoverable during voyage.

Section 603, R.S. § 4546, Acts May 28, 1896, c. 252, § 19, 29 Stat. 184; Mar. 2, 1901, c. 814, 31 Stat. 956, related to summons for nonpayment.

Section 604, R.S. § 4547, Acts May 28, 1896, c. 252, § 19, 29 Stat. 184; Dec. 21, 1898, c. 28, §§ 6, 26, 30 Stat. 756, 764; Mar. 2, 1901, c. 814, 31 Stat. 956, related to libel for wages.

Section 605, R.S. § 4548, related to wages payable in gold.

Section 606, Pub.L. 90-293, § 1(a), Apr. 25, 1968, 82 Stat. 107, related to master's lien for wages against vessel.

Section 607, Pub.L. 90-293, § 1(b), Apr. 25, 1968, 82 Stat. 107, related to proceedings for enforcement of master's lien for wages against vessel.

Section 608, Pub.L. 90-293, § 2, Apr. 25, 1968, 82 Stat. 108, related to definition of master.

Former provisions are covered by Revised Title 46 as follows:

Former Provisions	Present Provisions
591	10313(a)
592	10313(b). See 2303(c)
593-595	10313(b), (c), (d)(1), (2)
596	10301(b), 10313(f)-(h), 10501(b), 10504(b)-(d)
597	2101(12), 10313(e), (i), 10504(a), (e)
598	10313(h), 10504(d), 10505(d)
599(a)	10314(a)(1)(A)-(C), (2), (b)
599(b)	10315(a)(1)-(3)
599(c), (d)	10315(b), (c)
599(e) first par.	2101(12), 10315(e)
599(e) second par.	10315(d)
599(f)	10104, 10314(e)
599(g)	10316(1), (2)(A)-(C), 10505(d), 10506(1), (2)(A)-(C)
600	10317
601	11108, 11109(a)-(c)
602	11111
603-607	Repealed
608	Repealed. See 10101(1)

WAGES ON CANAL BOATS

§ 611. Repealed. Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 600

Section, R.S. § 4251, provided that canal boats without masts or steam power would not be sub-

ject to be libeled in United States courts for wages employed on board.

EFFECTS OF DECEASED SEAMEN

§§ 621 to 628. Repealed. Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 600, 601, 604

Section 621, R.S. § 4538, related to the duty of a master where a seaman dies during voyage.

Section 622, R.S. § 4539; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, related to proceedings in regard to effects of deceased seamen or apprentices.

Section 623, R.S. § 4540, Act Mar. 3, 1911, c. 231, 36 Stat. 1167, related to penalty for neglect of master.

Section 624, R.S. § 4541, Acts Mar. 3, 1897, c. 389, § 4, 29 Stat. 689; Mar. 3, 1911, c. 231, 36 Stat. 1167, related to duties of consular officers.

Section 625, R.S. § 4542, Act Mar. 3, 1897, c. 389, § 6, 29 Stat. 689; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, related to the effects of seamen dying within the United States.

Section 626, R.S. § 4543, Act Mar. 3, 1911, c. 231, 36 Stat. 1167; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, related to payment to the district court.

Section 627, R.S. § 4544, Acts Mar. 3, 1911, c. 231, 36 Stat. 1167; Sept. 22, 1959, Pub.L. 86-364,

§§ 1, 2, 73 Stat. 646, related to distribution by the district court.

Section 628, R.S. § 4545, Acts Mar. 3, 1897, c. 389, § 7, 29 Stat. 689; Mar. 3, 1911, c. 231, 36 Stat. 1167, related to unclaimed wages and effects.

Former provisions are covered by Revised Title 46 as follows:

Former Provisions	Present Provisions
621	10701, 10702(a)
622 First-Fourth Rules	10703(a)-(d)

Former Provisions	Present Provisions
622 Fifth Rule	10702(b)
623	10711
624	10704, 10705
625	10706
626	10707, Repealed in Part
627	10709
628	10708, 10710

DISCHARGE

641 to 646. Repealed. Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 600, 601, 603-605

Section 641, R.S. § 4549; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, related to mode of discharge.

Section 642, R.S. § 4550; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, related to accounting as to wages.

Section 643, R.S. § 4551, Acts June 25, 1936, c. 816, § 3, 49 Stat. 1934; Mar. 24, 1937, c. 49, § 1, 50 Stat. 49; Oct. 17, 1940, c. 896, § 1, 54 Stat. 1200; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, related to continuous discharge book and certificate of identification.

Section 643a, Pub.L. 96-378, § 5, Oct. 6, 1980, 94 Stat. 1518, related to discharge book and certificate provisions as inapplicable to nonself-propelled vessels or vessels with certain cargoes in bulk.

Section 643b, Act Oct. 17, 1940, c. 896, § 2, 54 Stat. 1201, related to the extension, in the national interest, of section 643(l) of this title to other vessels and waters.

Section 644, R.S. § 4552; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, related to rules for settlement.

Section 645, R.S. § 4553; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, related to certificates of character.

Section 646, Act June 19, 1886, c. 421, § 2, 24 Stat. 80; 1946 Reorg. Plan No. 3, §§ 101-104, eff.

July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, related to discharge of crews in coastwise trade.

Former provisions are covered by Revised Title 46 as follows:

Former Provisions	Present Provisions
641	10310
642	10310. See 10312(c)
643(a)	7302, 7303, 7318, 8701(a), (a)(1), (3), 8702(a), (a)(1), (3)
643(b)	7304
643(c)	7302, 10306, 10503
643(d)	10311(c)
643(e)	10311(a), (b)
643(f)	7319, 7502, 10311(d)(1)
643(g)	Repealed
643(h)	7501(a), (b). See 1031(d)(2)
643(i)	8701(a)(3), 8702(a)(3), 10311(e)
643(j)	2103, 2104, 7301(b), 8105
643(k)	10102(a)-(c)
643(l)	7316, 8101(a), 8702(b)(1), (2), (c), 10103, 10311(a)-(c)
643a	8701(a)(2)
643b	Repealed
646	10102, 10301(a)(1), 10507

PROTECTION AND RELIEF

§§ 651 to 672. Repealed. Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 600-605

Section 651, R.S. § 4554; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, related to Coast Guard officials as arbiters.

Section 652, R.S. § 4555; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, related to examination of witnesses.

Section 653, R.S. § 4556, Act Dec. 21, 1898, c. 28, §§ 7, 26, 30 Stat. 757, 764, related to complaints that a vessel was unseaworthy.

Section 654, R.S. § 4557, Acts Dec. 21, 1898, c. 28, §§ 8, 26, 30 Stat. 757, 764; July 1, 1902, c. 1370, 32 Stat. 712, related to proceedings on examination of vessel.

Section 655, R.S. § 4558, Act Dec. 21, 1898, c. 28, §§ 9, 26, 30 Stat. 757, 764, related to refusal to proceed when vessel found seaworthy.

Section 656, R.S. § 4559, Acts Dec. 21, 1898, c. 28, §§ 10, 26, 30 Stat. 757, 764; Apr. 5, 1906, c.

§ 675. Certificate to list of crew; record

Transfer of Functions. All offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise in the Bureau of Customs of the Department of the Treasury to which appointments were required to be made by the President with the advice and consent of the Senate were ordered abolished, with such offices to be terminated not later than De-

cember 31, 1966, by Reorg. Plan No. 1 of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set out in the Appendix to Title 5, Government Organization and Employees. All functions of the offices eliminated were already vested in the Secretary of the Treasury by Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5.

§ 676. Rules as to list of crew

Transfer of Functions. All offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise in the Bureau of Customs of the Department of the Treasury to which appointments were required to be made by the President with the advice and consent of the Senate were ordered abolished, with such offices to be terminated not later than December 31, 1966, by Reorg. Plan No. 1 of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set

out in the Appendix to Title 5, Government Organization and Employees. All functions of the offices eliminated were already vested in the Secretary of the Treasury by Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5.

Code of Federal Regulations

Shipment and discharge of seamen, see 46 CFR 14.01-1 et seq.

§ 677. Production of copy of list on return of vessel; production of persons named

Transfer of Functions. All offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise in the Bureau of Customs of the Department of the Treasury to which appointments were required to be made by the President with the advice and consent of the Senate were ordered abolished, with such offices to be terminated not later than December 31, 1966, by Reorg. Plan No. 1 of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set

out in the Appendix to Title 5, Government Organization and Employees. All functions of the offices eliminated were already vested in the Secretary of the Treasury by Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5.

Code of Federal Regulations

Arrival and entry, see 19 CFR 4.0 to 4.17.

678 to 680. Repealed. Pub.L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 600, 601, 603

Section 678, R.S. § 4577, Act Apr. 5, 1906, c. 1366, § 3, 34 Stat. 100, related to subsistence to destitute seamen, and return to the United States. See section 11104 of this title.

Section 679, R.S. § 4578, Acts June 26, 1884, c. 121, § 9, 23 Stat. 55; June 19, 1886, c. 421, § 18, 24 Stat. 83; July 31, 1894, c. 174, § 4, 28 Stat. 205; June 10, 1921, c. 18, § 304, 42 Stat. 24; May 7, 1930, c. 227, 46 Stat. 261, related to transportation of destitute seamen to the United States. See section 11104 of this title.

Section 680, Acts June 1, 1922, c. 204, Title I, 42 Stat. 603; Jan. 3, 1923, c. 21, Title I, 42 Stat.

1072, related to the rate for transportation of destitute seamen to the United States on steam vessels. See section 11104(c) of this title.

Former provisions are covered by Revised Title 46 as follows:

Present Provisions	Former Provisions
678.....	11104(a)
679 first par.....	11104(b), (c)
679 second, third pars.....	11104(c)
679 fourth par.....	11104(d)

INDEX

CONSULT GENERAL INDEX

